

## CHAPTER IV—OFFICE OF LABOR- MANAGEMENT STANDARDS, DEPARTMENT OF LABOR

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### SUBCHAPTER A—LABOR-MANAGEMENT STANDARDS

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## SUBCHAPTER A—LABOR-MANAGEMENT STANDARDS

### PART 401—MEANING OF TERMS USED IN THIS SUBCHAPTER

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AUTHORITY: Secs. 3, 208, 301, 401, 402, 73 Stat. 520, 529, 530, 532, 534 (29 U.S.C. 402, 438, 461, 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997; §401.4 also issued under sec. 320 of Title III of the Bankruptcy Reform Act of 1978, Pub. L. 95-598, 92 Stat. 2678.

SOURCE: 28 FR 14380, Dec. 27, 1963, unless otherwise noted.

#### §401.1 Commerce.

*Commerce* means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

#### §401.2 State.

*State* includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

#### §401.3 Industry affecting commerce.

*Industry affecting commerce* means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes

any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

#### §401.4 Person.

*Person* includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, or receivers.

[45 FR 70445, Oct. 24, 1980, as amended at 59 FR 15115, Mar. 31, 1994]

#### §401.5 Employer.

*Employer* means any employer or any group or association of employers engaged in an industry affecting commerce (a) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (b) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

#### §401.6 Employee.

*Employee* means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

#### §401.7 Labor dispute.

*Labor dispute* includes any controversy concerning terms, tenure, or

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conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

### **§ 401.8 Trusteeship.**

*Trusteeship* means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

### **§ 401.9 Labor organization.**

*Labor organization* means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

### **§ 401.10 Labor organization engaged in an industry affecting commerce.**

A labor organization shall be deemed to be engaged in an industry affecting commerce if it:

(a) Is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(b) Although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(c) Has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within

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the meaning of paragraph (a) or (b) of this section; or

(d) Has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (a) or (b) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(e) Is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this section, other than a State or local central body.

### **§ 401.11 Secret ballot.**

*Secret ballot* means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

### **§ 401.12 Trust in which a labor organization is interested.**

*Trust in which a labor organization is interested* means a trust or other fund or organization (a) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (b) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

### **§ 401.13 Labor relations consultant.**

*Labor relations consultant* means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

### **§ 401.14 Officer.**

*Officer* means any constitutional officer, any person authorized to perform

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the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

### § 401.15 Member or member in good standing.

*Member or member in good standing*, when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

### § 401.16 Secretary.

*Secretary* means the Secretary of Labor.

### § 401.17 Act.

*Act* means the Labor-Management Reporting and Disclosure Act of 1959.

### § 401.18 Office.

*Office* means the Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

[62 FR 6092, Feb. 10, 1997]

### § 401.19 Assistant Secretary.

*Assistant Secretary* means the Assistant Secretary of Labor for Employment Standards, head of the Employment Standards Administration.

[62 FR 6092, Feb. 10, 1997]

## PART 402—LABOR ORGANIZATION INFORMATION REPORTS

Sec.

402.1 Labor organization constitution and bylaws.

402.2 Labor organization initial information report.

402.3 Filing of initial reports.

402.4 Subsequent reports.

402.5 Terminal reports.

402.6 Receipt of reports and documents.

402.7 Effect of acknowledgment and filing by the Office of Labor-Management Standards.

402.8 Personal responsibility of signatories of reports.

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402.13 OMB control number.

AUTHORITY: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14381, Dec. 27, 1963, unless otherwise noted.

### § 402.1 Labor organization constitution and bylaws.

Every labor organization shall adopt a constitution and bylaws consistent with the provisions of the Act applicable thereto, within 90 days after the date the labor organization first becomes subject to the Act. This shall not, however, require the formal re-adoption by a labor organization of such a constitution and bylaws which it has previously adopted and under which it is operating when the report prescribed by § 402.2 is filed. As used in this part *constitution and bylaws* means the basic written rules governing the organization.

[28 FR 14381, Dec. 27, 1963, as amended at 40 FR 58856, Dec. 19, 1975]

### § 402.2 Labor organization initial information report.

Every labor organization shall file a report signed by its president and secretary or corresponding principal officers containing the information required to be filed by section 201(a) of the Act, and found necessary to be reported under section 208 thereof by the Assistant Secretary, on United States Department of Labor Form LM-1<sup>1</sup> entitled, "Labor Organization Information Report". There shall be attached to such report and made a part thereof a copy of the constitution and bylaws adopted by the reporting labor organization.

[28 FR 14381, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 402.3 Filing of initial reports.

(a) Every labor organization shall file with the Office of Labor-Management

<sup>1</sup> Filed as part of the original document.

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Standards the report and (subject to the provisions of paragraph (b) of this section, where applicable) a copy of its constitution and bylaws required by section 201(a) of the Act and § 402.2, together with one additional copy of each, within 90 days after the date on which it first becomes subject to the Act.

(b) A labor organization subject to paragraph (a) of this section may adopt or may have adopted as its constitution and bylaws (whether by formal action or by virtue of affiliation with a parent organization) a constitution and bylaws of a national or international labor organization which the national or international organization is required to file under section 201(a) of the Act and this part. In such a case, a filing by the national or international labor organization of copies of such constitution and bylaws will be accepted as a filing of such documents by each such adopting labor organization within the meaning of section 201(a) of the Act and this part, if the following conditions are met:

(1) The national or international labor organizations shows in its report filed under paragraph (a) of this section that copies of its constitution and bylaws are being filed on behalf of such adopting organizations as well as on its own behalf, and files such number of additional copies as the Office of Labor-Management Standards may request, and

(2) The adopting labor organization shows in its report filed under paragraph (a) of this section that the national or international constitution and bylaws are also its constitution and bylaws and that copies are filed on its behalf by the national or international labor organization.

If the constitution and bylaws of the adopting labor organization include other documents, this shall be shown in such report and copies shall be filed as provided in paragraph (a) of this section.

[28 FR 14381, Dec. 27, 1963, as amended at 35 FR 2990, Feb. 13, 1970; 40 FR 58856, Dec. 19, 1975; 50 FR 31309, Aug. 1, 1985]

#### § 402.4 Subsequent reports.

(a) Except as noted elsewhere in this paragraph, every labor organization

which revises the most recent constitution and bylaws it has filed with the Office of Labor-Management Standards shall file two dated copies of its revised constitution and bylaws at the time it files its annual financial report as provided in part 403 of this chapter. However, a labor organization which has as its constitution and bylaws a uniform constitution and bylaws prescribed by the reporting labor organization's parent national or international labor organization in accordance with § 402.3(b) is not required to file copies of a revised uniform constitution and bylaws if the parent national or international labor organization files as many copies of the revised constitution and bylaws with the Office of Labor-Management Standards as the Office may request.

(b) Every labor organization which changes the practices and procedures for which separate statements must be filed pursuant to subsection 201(a)(5) (A) through (M) of the Act shall file with the Office of Labor-Management Standards two copies of an amended Form LM-1, signed by its president and secretary or corresponding principal officers. The amended Form LM-1 shall be filed when the labor organization files its annual financial report as provided in part 403 of this chapter.

[58 FR 67604, Dec. 21, 1993]

#### § 402.5 Terminal reports.

(a) Any labor organization required to file reports under the provisions of this part, which ceases to exist by virtue of dissolution or any other form of termination of its existence as a labor organization, or which loses its identity as a reporting labor organization through merger, consolidation or otherwise, shall file a report containing a detailed statement of the circumstances and effective date of such termination or loss of reporting identity, and if the latter, such report shall also state the name and mailing address of the labor organization into which it has been consolidated, merged, or otherwise absorbed. Such report shall be submitted on Form LM-2 in connection with the terminal financial report required by § 403.5 of this chapter and shall be signed by the president and treasurer, or corresponding principal officers, of the

labor organization at the time of its termination or loss of reporting identity and, together with a copy thereof, shall be filed with the Office of Labor-Management Standards within 30 days of the effective date of such termination or loss of reporting identity, as the case may be.

(b) Labor organizations which qualify to use Form LM-3, the Labor Organization Annual Report, pursuant to §§ 403.4 and 403.5 of this chapter may file the terminal report called for in this section on Form LM-3. This report must be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

(c) Labor organizations which qualify to use Form LM-4, the Labor Organization Annual Report, pursuant to §§ 403.4 and 403.5 of this chapter may file the terminal report called for in this section on Form LM-4. The report must be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

[28 FR 14381, Dec. 27, 1963, as amended at 62 FR 6092, Feb. 10, 1997]

**§ 402.6 Receipt of reports and documents.**

Upon receipt of all reports and documents submitted for filing under the provisions of this part, the Office of Labor-Management Standards shall assign to the initial information report filed by each labor organization, an identifying number. This number thereafter shall be entered by the reporting labor organization on all subsequent or terminal reports and all other documents which it thereafter submits for filing under this part, as well as on all communications directed to the Office concerning such reports and documents.

**§ 402.7 Effect of acknowledgment and filing by the Office of Labor-Management Standards.**

Acknowledgment by the Office of Labor-Management Standards of the receipt of reports and documents submitted for filing under this part, is intended solely to inform the sender of the receipt thereof by the Office, and neither such acknowledgment nor the filing of such reports and documents by the Office constitutes express or im-

plied approval thereof, or in any manner indicates that the content of any such report or document fulfills the reporting or other requirements of the Act, or of the regulations in this chapter, applicable thereto.

**§ 402.8 Personal responsibility of signatories of reports.**

Each individual required to sign any report under section 201(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

**§ 402.9 Maintenance and retention of records.**

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

**§ 402.10 Dissemination and verification of reports.**

Every labor organization required to submit a report under section 201(a) of the Act and under this part shall make available to all its members the information required to be contained in such report, including the copy of the constitution and bylaws required to be filed therewith, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report and constitution and bylaws.

[28 FR 14381, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

**§ 402.11 Attorney-client communications exempted.**

Nothing contained in this part shall be construed to require an attorney

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who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(a) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

### § 402.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

### § 402.13 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15115, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

## PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Sec.

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403.2 Annual financial report.

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403.9 Attorney-client communications exempted.

403.10 Publication of reports required by this part.

403.11 OMB control number.

AUTHORITY: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14383, Dec. 27, 1963, unless otherwise noted.

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### § 403.1 Fiscal year for reports required by this part.

(a) As used in this part, unless otherwise defined, the term *fiscal year* means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a labor organization reporting under this part. Where a labor organization designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order each constitute a fiscal year for purposes of the report required to be filed by section 201(b) of the Act, and of the regulations in this part.

(b) A labor organization which is subject to section 201(b) of the Act for only a portion of its fiscal year because the labor organization first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making its report under this part.

[28 FR 14383, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

### § 403.2 Annual financial report.

(a) Every labor organization shall, as prescribed by the regulations in this part, file with the Office of Labor-Management Standards within 90 days after the end of each of its fiscal years, a financial report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof.

(b) Every labor organization shall include in its annual financial report filed as provided in paragraph (a) of this section, in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as prescribed by the Assistant Secretary under the provisions of this part, the information required by section 201(b) of the Act and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

(c) If, on the date for filing the annual financial report of a labor organization required under section 201(b) of



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the Act and this section, such labor organization is in trusteeship, the labor organization which has assumed trusteeship over such labor organization shall file such report as provided in § 408.5 of this chapter.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 403.3 Form of annual financial report—detailed report.

Every labor organization shall, except as expressly provided otherwise in this part, file an annual financial report as required by § 403.2, prepared on United States Department of Labor Form LM-2, "Labor Organization Annual Report," in the detail required by the instructions accompanying the form and constituting a part thereof.

NOTE: Form LM-2 was revised at 58 FR 67594, December 21, 1993.

[28 FR 14383, Dec. 27, 1963, as amended at 62 FR 6092, Feb. 10, 1997]

### § 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) If a labor organization, not in trusteeship, has gross annual receipts totaling less than \$200,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM-3 entitled "Labor Organization Annual Report," in accordance with the instructions accompanying such form and constituting a part thereof.

(2) If a labor organization, not in trusteeship, has gross annual receipts totaling less than \$10,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 on United States Department of Labor Form LM-4 entitled "Labor Organization Annual Report" in accordance with the instructions accompanying such form and constituting a part thereof.

(b) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the

annual report of the national organization with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-size sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM-3 or LM-4, as may be appropriate, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

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(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

### CERTIFICATION

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)–(v), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; and (v) the names and titles of the president and treasurer or corresponding principal officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(FORMAT FOR SIMPLIFIED ANNUAL REPORTING)

### SIMPLIFIED ANNUAL REPORT

Affiliation name: \_\_\_\_\_

Designation name and number: \_\_\_\_\_

Unit name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Name of person: \_\_\_\_\_

Number and street: \_\_\_\_\_

City, State and zip: \_\_\_\_\_

File number: \_\_\_\_\_

Period covered: \_\_\_\_\_

From \_\_\_\_\_ Through \_\_\_\_\_

Names and Titles of president and treasurer or corresponding principal officers

For certification see NHQ file folder file number: \_\_\_\_\_

President \_\_\_\_\_

Where signed \_\_\_\_\_

Date \_\_\_\_\_

Treasurer \_\_\_\_\_

Where signed \_\_\_\_\_

Date \_\_\_\_\_

[28 FR 14383, Dec. 27, 1963, as amended at 37 FR 10669, May 26, 1972; 41 FR 27318, July 2, 1976; 45 FR 7525, Feb. 1, 1980; 50 FR 31309, Aug. 1, 1985; 50 FR 31310, Aug. 1, 1985; 57 FR 49290, 49357, Oct. 30, 1992; 62 FR 6092, Feb. 10, 1997; 64 FR 71623, Dec. 21, 1999; 65 FR 21141, Apr. 20, 2000]

### § 403.5 Terminal financial report.

(a) Any labor organization required to file a report under the provisions of this part, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall, within 30 days after such loss, file a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM-2, LM-3, or LM-4, as may be appropriate, signed by the president and treasurer or corresponding principal officers of the labor organization immediately prior to the time of its loss of reporting identity.

(b) Every labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM-2 and in accordance with the requirements of this part.

(c) For purposes of the reports required by paragraphs (a) and (b) of this section, the period covered thereby shall be the portion of the labor organization's fiscal year ending on the effective date of its loss of reporting identity, or the portion of the subordinate labor organization's fiscal year ending on the effective date of the termination of trusteeship over such subordinate labor organization, as the case may be.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, 31310, Aug. 1, 1985; 62 FR 6092, Feb. 10, 1997]

**§ 403.6 Personal responsibility of signatories of reports.**

Each individual required to sign a report under section 201(b) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein in which he knows to be false.

**§ 403.7 Maintenance and retention of records.**

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

**§ 403.8 Dissemination and verification of reports.**

Every labor organization required to submit a report under section 201(b) of the Act and under this part shall make available to all its members the information required to be contained in such reports, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

**§ 403.9 Attorney-client communications exempted.**

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(b) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

**§ 403.10 Publication of reports required by this part.**

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

**§ 403.11 OMB control number.**

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15115, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

**PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS**

Sec.

404.1 Definitions.

404.2 Annual report.

404.3 Form of annual report.

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404.7 Maintenance and retention of records.

404.8 Publication of reports required by this part.

404.9 OMB control number.

AUTHORITY: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14384, Dec. 27, 1963, unless otherwise noted.

**§ 404.1 Definitions.**

As used in this part the term:

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(a)(1) *Fiscal year* means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts of the labor organization officer or employee are kept. Where a labor organization officer or employee designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 202(a) of the Act and the regulations in this part.

(2) A labor organization officer or employee who is subject to section 202(a) of the Act for only a portion of his fiscal year because the labor organization officer or employee first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making this report under this part.

(b) *Labor organization officer* means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(c) *Labor organization employee* means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization.

(d) *Employer* means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Govern-

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ment of the United States or any State or political subdivision thereof.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

### § 404.2 Annual report.

Every labor organization officer and employee who in any fiscal year has been involved in transactions of the type described in section 202(a) of the Act, or who holds or has held any interest in an employer or a business of the type referred to therein, or who has received any payments of the type referred to in that section, or who holds or has held an interest in or derived income or economic benefit with monetary value from a business any part of which consists of dealing with a trust in which his labor organization is interested, or whose spouse or minor child has been involved in such transactions, holds or has held any such interests, or has received such payments, is required to file with the Office of Labor-Management Standards, within 90 days after the end of his fiscal year, a signed report containing the detailed information required therein by section 202(a) of the Act, and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 404.3 Form of annual report.

On and after the effective date of this section, every labor organization officer and employee required to file an annual report under § 404.2 shall file such report on United States Department of Labor Form LM-30 entitled "Labor Organization Officer and Employee Report," together with a true copy thereof, in the detail required by the instructions accompanying such form and constituting a part thereof.

### § 404.4 Special report.

In addition to the report on Form LM-30, the Office of Labor-Management Standards may require from union officers and employees subject to the Act the submission of special reports of pertinent information including, but not necessarily confined to, reports with respect to matters referred

to in items (ii) and (iv) of the Instructions relating to part A of the form and items (ii) and (iii) of the Instructions relating to part C of the form.

**§ 404.5 Attorney-client communications exempted.**

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 202(a) of the Act and of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

**§ 404.6 Personal responsibility of signatories of reports.**

Every labor organization officer or employee required to file a report under section 202(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

**§ 404.7 Maintenance and retention of records.**

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

**§ 404.8 Publication of reports required by this part.**

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

**§ 404.9 OMB control number.**

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15116, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

**PART 405—EMPLOYER REPORTS**

Sec.

- 405.1 Definitions.
- 405.2 Annual report.
- 405.3 Form of annual report.
- 405.4 Terminal report.
- 405.5 Special reports.
- 405.6 Exceptions from the filing requirements of § 405.2.
- 405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.
- 405.8 Personal responsibility of signatories of reports.
- 405.9 Maintenance and retention of records.
- 405.10 Publication of reports required by this part.
- 405.11 OMB control number.

AUTHORITY: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14384, Dec. 27, 1963, unless otherwise noted.

**§ 405.1 Definitions.**

As used in this part the term:

(a) *Fiscal year* means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by an employer. Where an employer designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal year for purposes of the reports required to be filed by section 203(a) of the Act and of the regulations in this part.

(b) *Corresponding principal officers* shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any employer engaged in whole or in part in the performance of

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the activities described in section 203(a) of the Act.

[28 FR 14384, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

### § 405.2 Annual report.

Every employer who in any fiscal year has made any payment, loan, promise, agreement, arrangement or expenditure of the kind described and required by section 203(a) of the Act to be reported, shall, as prescribed by the regulations in this part, file with the Office of Labor-Management Standards, within 90 days after the end of each of its fiscal years, a report signed by its president and treasurer, or corresponding principal officers, together with a true copy thereof, containing the detailed information required therein by section 203(a) of the Act and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

[28 FR 14384, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 405.3 Form of annual report.

On and after the effective date of this section, every employer required to file an annual report by section 203(a) of the Act and § 405.2 shall file such report on the United States Department of Labor Form LM-10 entitled, "Employer Report"<sup>1</sup> in the detail required by the instructions<sup>1</sup> accompanying such form and constituting a part thereof.

[28 FR 14384, Dec. 27, 1963, as amended at 38 FR 10715, May 1, 1973; 42 FR 59070, Nov. 15, 1977]

### § 405.4 Terminal report.

(a) Every employer required to file a report under the provisions of this part, who during its fiscal year loses its identity as a reporting employer through merger, consolidation, dissolution, or otherwise, shall, within 30 days of the effective date thereof, file a terminal employer report, and one copy, with the Office of Labor-Management Standards on Form LM-10 signed by the president and treasurer or corresponding principal officers of such employer immediately prior to the time of the employer's loss of reporting

<sup>1</sup> Filed as part of the original document.

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identity, together with a statement of the effective date of such termination or loss of reporting identity, and if the latter, the name and mailing address of the employer entity into which it has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report required by paragraph (a) of this section, the period covered thereby shall be the portion of the employer's fiscal year ending on the effective date of the employer's termination or loss of reporting identity.

### § 405.5 Special reports.

In addition to the report on Form LM-10, the Office of Labor-Management Standards may require from employers subject to the Act the submission of special reports on pertinent information, including but not necessarily confined to reports with respect to specifically identified personnel on the matters referred to in the second paragraph under the instructions for Question 8A of Form LM-10.

[42 FR 59070, Nov. 15, 1977]

### § 405.6 Exceptions from the filing requirements of § 405.2.

Nothing contained in this part shall be construed to require:

(a) An employer to file a report unless said employer has made an expenditure, payment, loan, agreement, or arrangement of the kind described in section 203(a) of the Act;

(b) Any employer to file a report covering the services of any person by reason of his (1) giving or agreeing to give advice to such employer or (2) representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or (3) engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any employer to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer;

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(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

### **§ 405.7 Relation of section 8(c) of the National Labor Relations Act, as amended, to the reporting requirements of § 405.2.**

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by section 8(c) of the National Labor Relations Act, as amended, activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of section 203(a) of the Labor-Management Reporting and Disclosure Act of 1959 and § 405.2, and, if otherwise subject to such reporting requirements, are required to be reported if they have been engaged in during the course of the reporting fiscal year. However, the information required to be reported in Question 8C of Form LM-10 does not include matters protected by section 8(c) of the National Labor Relations Act, as amended, because the definition in section 203(g) of the term "interfere with, restrain, or coerce", which is used in Question 8C does not cover such matters.

[42 FR 59070, Nov. 15, 1977]

### **§ 405.8 Personal responsibility of signatories of reports.**

Each individual required to sign a report under section 203(a) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

### **§ 405.9 Maintenance and retention of records.**

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be

verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

### **§ 405.10 Publication of reports required by this part.**

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

### **§ 405.11 OMB control number.**

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15116, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

## **PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS**

Sec.

406.1 Definitions.

406.2 Agreement and activities report.

406.3 Receipts and disbursements report.

406.4 Terminal report.

406.5 Persons excepted from filing reports.

406.6 Relation of section 8(c) of the National Labor Relations Act to this part.

406.7 Personal responsibility of signatories of reports.

406.8 Maintenance and retention of records.

406.9 Publication of reports required by this part.

406.10 OMB control number.

AUTHORITY: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14385, Dec. 27, 1963, unless otherwise noted.

### **§ 406.1 Definitions.**

As used in this part, the term:

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(a) *Corresponding principal officers* means any person or persons performing or authorized to perform, principal executive functions corresponding to those of president and treasurer of any entity engaged in whole or in part in the performance of the activities described in section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) *Fiscal year* means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a person. Where a person designates a new fiscal year prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order constitute the fiscal years.

(c) *Undertake* means not only the performing of activities, but also the agreeing to perform them or to have them performed.

(d) *A direct or indirect party to an agreement or arrangement* includes persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in § 406.2 as well as persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person, except bona fide regular officers, supervisors or employees of their employer to the extent to which they undertook to perform services as such bona fide regular officers, supervisors or employees of their employer.

[28 FR 14385, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977; 63 FR 33779, June 19, 1998]

### § 406.2 Agreement and activities report.

(a) Every person who as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to such agreement or arrangement, any activities where an object thereof is, directly or indirectly, (1) to persuade employees to exercise or not to exercise, or to persuade employees as to the manner of exercising,

the right to organize and bargain collectively through representatives of their own choosing; or, (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall, as prescribed by the regulations in this part, file a report with the Office of Labor-Management Standards, and one copy thereof, on Form LM-20<sup>1</sup> entitled "Agreement and Activities Report (required of persons, including labor relations consultants and other individuals and organizations)" in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 30 days after entering into an agreement or arrangement of the type described in this section. If there is any change in the information reported (other than that required by Item C, 10, (c) of the Form), it must be filed in a report clearly marked "Amended Report" within 30 days of the change.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 406.3 Receipts and disbursements report.

(a) Every person who, as a direct or indirect party to any agreement or arrangement, undertakes any activities of the type described in § 406.2 pursuant to such agreement or arrangement and who, as a result of such agreement or arrangement made or received any payment during his fiscal year, shall, as prescribed by the regulations in this part, file a report and one copy thereof, with the Office of Labor-Management Standards, on Form LM-21<sup>1</sup> entitled "Receipts and Disbursements Report (required of persons, including labor relations consultants, other individuals

<sup>1</sup> Filed as part of the original document.



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and organizations)", in the detail required by such form and the instructions accompanying such form and constituting a part thereof. The report shall be filed within 90 days after the end of such person's fiscal year during which payments were made or received as a result of such an agreement or arrangement.

(b) The report shall be signed by the president and treasurer or corresponding principal officers of the reporting person. If the report is filed by an individual in his own behalf, it need only bear his signature.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

### § 406.4 Terminal report.

(a) Every person required to file a report pursuant to the provisions of this part who during his fiscal year loses his identity as a reporting entity through merger, consolidation, dissolution, or otherwise shall within 30 days of the effective date thereof or of the effective date of this section, whichever is later, file a terminal report, and one copy thereof, with the Office of Labor-Management Standards, on Form LM-21 signed by the president and treasurer or corresponding principal officers immediately prior to the time of the person's loss of reporting identity (or by the person himself if he is an individual), together with a statement of the effective date of termination or loss of reporting identity, and if the latter, the name and mailing address of the entity into which the person reporting has been merged, consolidated or otherwise absorbed.

(b) For purposes of the report referred to in paragraph (a) of this section, the period covered thereby shall be the portion of the reporting person's fiscal year ending on the effective date of the termination or loss of identity.

[28 FR 14385, Dec. 27, 1963, as amended at 50 FR 31310, Aug. 1, 1985]

### § 406.5 Persons excepted from filing reports.

Nothing contained in this part shall be construed to require:

(a) Any person to file a report under this part unless he was a direct or indi-

rect party to an agreement or arrangement of the kind described in § 406.2;

(b) Any person to file a report covering the services of such person by reason of his (1) giving or agreeing to give advice to an employer; or (2) representing or agreeing to represent an employer before any court, administrative agency, or tribunal of arbitration; or (3) engaging or agreeing to engage in collective bargaining on behalf of an employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder;

(c) Any regular officer, or employee of an employer to file a report in connection with services rendered as such regular officer, supervisor or employee to such employer;

(d) An attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

### § 406.6 Relation of section 8(c) of the National Labor Relations Act to this part.

While nothing contained in section 203 of the Act shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended (61 Stat. 142; 29 U.S.C. 158 (c)), activities protected by such section of the said Act are not for that reason exempted from the reporting requirements of this part and, if otherwise subject to such reporting requirements, are required to be reported. Consequently, information required to be included in Forms LM-20 and 21 must be reported regardless of whether that information relates to activities which are protected by section 8(c) of the National Labor Relations Act, as amended.

### § 406.7 Personal responsibility of signatories of reports.

Each individual required to file a report under this part shall be personally responsible for the filing of such report

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and for any statement contained therein which he knows to be false.

### § 406.8 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

### § 406.9 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

### § 406.10 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15116, Mar. 31, 1994 as amended at 63 FR 46888, Sept. 3, 1998]

## PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

Sec.

408.1 Definitions.

408.2 Initial trusteeship report.

408.3 Form of initial report.

408.4 Semiannual trusteeship report.

408.5 Annual financial report.

408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

408.7 Terminal trusteeship financial report.

408.8 Terminal trusteeship information report.

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408.9 Personal responsibility of signatories of reports.

408.10 Maintenance and retention of records.

408.11 Dissemination and verification of reports.

408.12 Publication of reports required by this part.

408.13 OMB control number.

AUTHORITY: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14387, Dec. 27, 1963, unless otherwise noted.

### § 408.1 Definitions.

(a) *Corresponding principal officers* shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer, of any labor organization which has assumed or imposed a trusteeship over a labor organization within the meaning of section 301(a) of the Labor-Management Reporting and Disclosure Act of 1959.

(b) *Trusteeship* means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(c) *Policy determining body* means any body which is convened by the parent labor organization or other labor organization which is composed of delegates from labor organizations and which formulates policy on such matters as wages, hours, or other conditions of employment or recommends or takes any action in the name of the participating labor organizations. Such a body includes, for example, a district council, area conference or joint board.

### § 408.2 Initial trusteeship report.

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Office of Labor-Management Standards within 30 days after the imposition of any such trusteeship, a trusteeship report, pursuant to § 408.3, together with a true copy thereof, signed by its president and treasurer, or corresponding principal officers, as

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well as by the trustees of such subordinate labor organization.

[28 FR 14387, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 408.3 Form of initial report.

On and after the effective date of this section, every labor organization required to file an initial report under § 408.2 shall file such report on United States Department of Labor Form LM-15 entitled "Trusteeship Report" in the detail required by the instructions accompanying such form and constituting a part thereof.

[28 FR 14387, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

### § 408.4 Semiannual trusteeship report.

Every labor organization required to file an initial report under § 408.2 shall thereafter during the continuance of trusteeship over the subordinate labor organization, file with the said Office of Labor-Management Standards semiannually, and not later than six months after the due date of the initial trusteeship report, a semiannual trusteeship report on Form LM-15 containing the information required by that form except for the Statement of Assets and Liabilities. If in answer to Item 9 of Form LM-15, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM-15A should be used to report the required information with respect thereto.

[42 FR 59070, Nov. 15, 1977]

### § 408.5 Annual financial report.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization the annual financial report required by part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organiza-

tion on Form LM-2, together with one true copy thereof.

### § 408.6 Amendments to the Labor Organization Information Report filed by or on behalf of the subordinate labor organization.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization any change in the information required by part 402 of this chapter in accordance with the procedure set out in § 402.4.

[63 FR 33779, June 19, 1998]

### § 408.7 Terminal trusteeship financial report.

Each labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report, and one copy, with the Office of Labor-Management Standards, on Form LM-2 and in conformance with the requirements of part 403 of this chapter.

### § 408.8 Terminal trusteeship information report.

There shall be filed at the same time that the terminal trusteeship financial report is filed a terminal trusteeship information report on Form LM-16. If in answer to Item 6 of Form LM-16, there was (a) a convention or other policy determining body to which the subordinate organization sent delegates or would have sent delegates if not in trusteeship or (b) an election of officers of the labor organization assuming trusteeship, Form LM-15A should be used to report the required information with respect thereto.

[40 FR 58856, Dec. 19, 1975]

### § 408.9 Personal responsibility of signatories of reports.

Each individual required to sign a report under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

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### § 408.10 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

### § 408.11 Dissemination and verification of reports.

Every labor organization required to submit a report shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

### § 408.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

### § 408.13 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15116, Mar. 31, 1994, as amended at 63 FR 46888, Sept. 3, 1998]

## PART 409—REPORTS BY SURETY COMPANIES

Sec.

409.1 Definitions.

409.2 Annual report.

409.3 Time for filing annual report.

409.4 Personal responsibility for filing of reports.

409.5 Maintenance and retention of records.

409.6 Publication of reports required by this part.

409.7 OMB control number.

AUTHORITY: Secs. 207, 208, 211; 79 Stat. 888; 88 Stat. 852 (29 U.S.C. 437, 438, 441); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 31 FR 11177, Aug. 24, 1966, unless otherwise noted.

### § 409.1 Definitions.

As used in this part, the term:

(a) *Fiscal year* means the calendar year, or other period of 12 consecutive calendar months. Once reported on one basis, a change in the reporting year shall be effected only upon prior approval by the Office of Labor-Management Standards.

(b) *Corresponding principal officers* shall include any person or persons performing or authorized to perform principal executive functions corresponding to those of president and treasurer of any surety underwriting a bond for which reports are required under section 211 of the Labor-Management Reporting and Disclosure Act of 1959.

### § 409.2 Annual report.

Each surety company having in force any bond required by section 502 of the Labor-Management Reporting and Disclosure Act of 1959 or section 412 of the Employee Retirement Income Security Act during the fiscal year, shall file with the Office of Labor-Management Standards a report, on U.S. Department of Labor Form S-1 entitled "Surety Company Annual Report"<sup>1</sup> signed by the president and treasurer or corresponding principal officers, in the detail required by the instructions accompanying such form and constituting a part thereof.

[42 FR 59070, Nov. 15, 1977, as amended at 50 FR 31309, Aug. 1, 1985; 50 FR 31310, Aug. 1, 1985]

### § 409.3 Time for filing annual report.

Each surety company required to file an annual report by section 211 of the

<sup>1</sup> Filed as part of the original document.

Labor-Management Reporting and Disclosure Act of 1959 and §409.2 shall file such report within 150 days after the end of the fiscal year. The period of 150 days within which reports must be filed is stipulated in lieu of the statutory period of 90 days (sec. 207(b), 73 Stat. 529, 29 U.S.C. 437(b) as amended by 79 Stat. 888) pursuant to a finding under section 211 (79 Stat. 888) of the Act that information required to be reported cannot be practicably ascertained within 90 days of the end of the fiscal year.

[31 FR 11177, Aug. 24, 1966, as amended at 50 FR 31310, Aug. 1, 1985]

**§409.4 Personal responsibility for filing of reports.**

Each individual required to file a report under section 211 of the Labor-Management Reporting and Disclosure Act of 1959, shall be personally responsible for the filing of such reports and for the accuracy of the information contained therein.

**§409.5 Maintenance and retention of records.**

Each surety required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the reports filed with the Office of Labor-Management Standards may be verified, explained or clarified and checked for accuracy and completeness, and shall keep such records available for examination for a period of not less than 5 years after the filing of the reports based on the information which they contain.

**§409.6 Publication of reports required by this part.**

Part 70 of this title shall govern inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them.

[35 FR 2990, Feb. 13, 1970]

**§409.7 OMB control number.**

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15116, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

**PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS**

**GENERAL**

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**AUTHORITY:** Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

**SOURCE:** 29 FR 8264, July 1, 1964, unless otherwise noted.

## GENERAL

**§ 417.1 Purpose and scope.**

Section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 481) provides that if, upon application of any member of a local labor organization, the Secretary of Labor finds, after hearing in accordance with the Administrative Procedure Act, that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot. Section 401(i) (29 U.S.C. 481) requires the Secretary to promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures referred to in section 401(h). Section 402(a) (29 U.S.C. 482) provides that a member of a labor organization who has exhausted the available internal remedies of such organization and of any parent body, or who has invoked such remedies without obtaining a final decision within three months, may file a complaint with the Secretary within one month thereafter alleging violation of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the removal of officers). Section 402(b) (29 U.S.C. 482) provides that upon suit initiated by the Secretary, a Federal court may direct the conduct of a hearing and vote upon the removal of officers under the supervision of the Secretary, and in accordance with such rules and regulations as the Secretary may prescribe. It is the purpose of this part to implement those sections by prescribing regulations relating to the procedures and standards for determining the adequacy of removal procedures and the procedures for holding elections for the removal of officers.

**§ 417.2 Definitions.**

(a) *Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

(b) *Adequate procedure* shall mean any procedure which affords reasonable and equitable opportunity for (1) trial of an officer(s) charged with serious misconduct, and (2) removal of such an officer(s) if found guilty, and which contains the elements set forth in each of the subparagraphs of this paragraph: *Provided, however*, That any other procedure which provides otherwise reasonable and equitable measures for removal from office may also be considered adequate:

(1) A reasonable opportunity is afforded for filing charges of serious misconduct against any elected officer(s) without being subject to retaliatory threats, coercion, or acts of intimidation.

(2) The charges of serious misconduct are communicated to the accused officer(s), and reasonable notice is given the members of the organization, reasonably in advance of the time for hearing thereon.

(3) Subject to reasonable restrictions, a fair and open hearing upon such charges is held after adequate notice and adequate opportunity is afforded for testimony or the submission of evidence in support of or in opposition to such charges. Within a reasonable time following such hearing, a decision is reached as to the guilt or innocence of the accused.

(4) If the hearing upon such charges is held before a trial committee or other duly authorized body, reasonable notice of such body's findings is given to the membership of the organization promptly.

(5) If such accused officer(s) is found guilty, he may be removed by a procedure which includes:

(i) A secret ballot vote of the members at an appropriately called meeting, or

(ii) A vote of a trial committee or other duly authorized body, subject to appeal and review by the members voting by a secret ballot at an appropriately called meeting.

(6) Within a reasonable time after the charges of serious misconduct are filed with the labor organization final disposition (including appellate procedures) is made of the charges.

(c) *Elected officer* means any constitutional officer, any person authorized to

perform the functions of president, vice-president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(d) *Cause shown* means substantial evidence of serious misconduct.

(e) *Interested person* means any person or organization whose interests are or may be affected by a proceeding.

(f) *Court* means the district court of the United States in the district in which the labor organization in question maintains its principal office.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 29 FR 9537, July 14, 1964; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997; 63 FR 33779, June 19, 1998]

### Subpart A—Procedures To Determine Adequacy of Constitution and Bylaws for Removal of Officers of Local Labor Organizations

#### § 417.3 Initiation of proceedings.

(a) Any member of a local labor organization who has reason to believe that:

(1) An elected officer(s) of such organization has been guilty of serious misconduct, and

(2) The constitution and bylaws of his organization do not provide an adequate procedure for the removal of such officer(s), may file with the Office of Labor-Management Standards a written application, which may be in the form of a letter, for initiation of proceedings under section 401(h) of the Act.

(b) An application filed under paragraph (a) of this section shall set forth the facts upon which it is based including a statement of the basis for the charge that an elected officer(s) is guilty of serious misconduct; and shall contain:

(1) Information identifying the labor organization and the officer or officers involved, and

(2) Any data such member desires the Office of Labor-Management Standards to consider in connection with his application.

#### § 417.4 Pre-hearing conference.

(a) Upon receipt of an application filed under § 417.3, the Chief, DOE shall cause an investigation to be conducted of the allegations contained therein, and if he finds probable cause to believe that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer(s) guilty of serious misconduct he shall:

(1) Advise the labor organization of his findings and

(2) Afford such labor organization the opportunity for a conference to be set not earlier than 10 days thereafter except where all interested persons elect to confer at an earlier time. Any such conference shall be conducted for the purpose of hearing the views of interested persons and attempting to achieve a settlement of the issue without formal proceedings.

(b)(1) If:

(i) The labor organization declines the opportunity to confer afforded under paragraph (a) of this section, and fails to undertake compliance with the provisions of section 401(h) of the Act, or if

(ii) After consideration of any views presented by the labor organization the Chief, DOE still finds probable cause to believe that the removal procedures are not adequate and if agreement for the adoption of adequate procedures for removal has not been achieved and the labor organization refuses to enter into a stipulation to comply with the provisions of section 401(h) of the Act, the Chief, DOE shall submit his findings and recommendations to the Assistant Secretary.

(2) Upon consideration of the Chief, DOE's recommendations, the Assistant Secretary may order a hearing to be conducted before an Administrative Law Judge duly assigned by him to receive evidence and arguments (i) on the applicability of section 401(h) of the Act to the labor organization involved, and (ii) on the question of whether its constitution and bylaws provide an adequate procedure for the removal of an elected union officer guilty of serious misconduct.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997]

## § 417.5

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### § 417.5 Notice.

Notice of hearing shall be given not less than 10 days before such hearing is held unless the parties agree to a shorter notice period. Such notice shall be transmitted to the labor organization and the officer(s) accused of misconduct and other interested persons, insofar as they are known, and shall inform them of:

(a) The time, place, and nature of the hearings;

(b) The legal authority and jurisdiction under which the hearing is to be held; and

(c) The matters of fact and law asserted.

The Labor organization shall inform its members of the provisions of the notice and copies of the notice shall be made available for inspection at the offices of the labor organization.

### § 417.6 Powers of Administrative Law Judge.

The designated Administrative Law Judge shall have authority:

(a) To give notice concerning and to conduct hearings;

(b) To administer oaths and affirmations;

(c) To issue subpoenas;

(d) To rule upon offers of proof and receive relevant evidence;

(e) To take or cause depositions to be taken whenever the ends of justice would be served thereby;

(f) To regulate the course of the hearing;

(g) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(h) To dispose of procedural requests or other matters;

(i) To limit the number of witnesses at hearings, or limit or exclude evidence or testimony which may be irrelevant, immaterial, or cumulative;

(j) If appropriate or necessary to exclude persons or counsel from participation in hearings for refusing any proper request for information or documentary evidence, or for contumacious conduct;

(k) To grant continuances or reschedule hearings for good cause shown;

(l) To consider and decide procedural matters;

(m) To take any other actions authorized by the regulations in this part.

The Administrative Law Judge's authority in the case shall terminate upon his filing of the record and his initial decision with the Assistant Secretary, or when he shall have withdrawn from the case upon considering himself disqualified, or upon termination of his authority by the Assistant Secretary for good cause stated. However, the Administrative Law Judge's authority may be reinstated upon referral of some or all the issues by the Assistant Secretary for rehearing. This authority will terminate upon certification of the rehearing record to the Assistant Secretary.

### § 417.7 Transcript.

An official reporter shall make the only official transcript of the proceedings. Copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of part 70 of this title.

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998]

### § 417.8 Appearances.

The Department of Labor does not maintain a register of persons or attorneys who may participate at hearings. Any interested person may appear and be heard in person or be represented by counsel.

### § 417.9 Evidence; contumacious or disorderly conduct.

(a) Formal rules of evidence or procedure in use in courts of law or equity shall not obtain. Rules of evidence are to be within the discretion of the Administrative Law Judge. However, it shall be the policy to exclude testimony or matter which is irrelevant, immaterial, or unduly repetitious.

(b) Contumacious or disorderly conduct at a hearing may be ground for exclusion therefrom. The refusal of a witness at any hearing to answer any questions which have been ruled to be proper shall, in the discretion of the Administrative Law Judge be ground for striking all testimony previously



given by such witness on related matter.

(c) At any stage of the hearing the Administrative Law Judge may call for further evidence or testimony on any matter. After the hearing has been closed, no further information shall be received on any matter, except where provision shall have been made for it at the hearing, or except as the Administrative Law Judge or Assistant Secretary may direct by reopening the hearing.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

**§ 417.10 Rights of participants.**

Every interested person shall have the right to present oral or documentary evidence, to submit evidence in rebuttal, and to conduct such examination or cross-examination as may be required for a full and true disclosure of the facts (subject to the rulings of the Administrative Law Judge), and to object to admissions or exclusions of evidence. The Department of Labor, through its officers and attorneys shall have all rights accorded interested persons by the provisions of this subpart A.

**§ 417.11 Objections to evidence.**

Objections to the admission or exclusion of evidence may be made orally or in writing, but shall be in short form, stating the grounds for such objection. The transcript shall not include argument or debate thereon except as required by the Administrative Law Judge. Rulings on such objections shall be a part of the transcript. No such objections shall be deemed waived by further participation in the hearing. Formal exceptions are unnecessary and will not be taken to rulings on objections.

**§ 417.12 Proposed findings and conclusions.**

Within 10 days following the close of hearings, interested persons may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become a part of the record.

**§ 417.13 Initial decision of Administrative Law Judge.**

Within 25 days following the period for submitting proposed findings and conclusions, the Administrative Law Judge shall consider the whole record, file an initial decision as to the adequacy of the constitution and bylaws for the purpose of removing officers with the Assistant Secretary, and forward a copy to each party participating in the hearing. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

**§ 417.14 Form and time for filing of appeal with the Assistant Secretary.**

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Assistant Secretary within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Assistant Secretary may allow), together with supporting reasons for such exceptions. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

(b) In the absence of either an appeal to the Assistant Secretary or review of the Administrative Law Judge's initial decision by the Assistant Secretary on his own motion, such initial decision shall become the decision of the Assistant Secretary.

**§ 417.15 Decision of the Assistant Secretary.**

Upon appeal filed with the Assistant Secretary pursuant to § 417.14, or within his discretion upon his own motion, the complete record of the proceedings shall be certified to him; he shall notify all interested persons who participated in the proceedings; and he shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as he

## § 417.16

deems appropriate. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

### **Subpart B—Procedures Upon Failure of Union to Take Appropriate Remedial Action Following Subpart A Procedures**

#### **§ 417.16 Initiation of proceedings.**

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Chief, DOE in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization (1) has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Chief, DOE, or (3) has violated the principles governing adequate removal procedures under § 417.2(b).

(b) The complaint must be filed pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met:

(1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or

(2) The member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

[59 FR 65716, Dec. 21, 1994, as amended at 62 FR 6093, Feb. 10, 1997]

#### **§ 417.17 Investigation of complaint and court action.**

The Office of Labor-Management Standards shall investigate such complaint, and if upon such investigation the Secretary finds probable cause to believe that a violation of section

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401(h) of the Act has occurred and has not been remedied, the Secretary shall within 60 days after the filing of such complaint, bring a civil action against the labor organization in the district court of the United States for the district in which such labor organization maintains its principal office, to direct the conduct of a hearing and vote upon the removal of officer(s) under the supervision of the Assistant Secretary as provided in section 402(b) of the Act.

[59 FR 65717, Dec. 21, 1994]

#### **§ 417.18 Hearings—removal of officers of local labor organizations.**

Hearings pursuant to order of the court and concerning the removal of officers under section 402(b) of the Act shall be for the purpose of introducing testimony and evidence showing why an officer or officers accused of serious misconduct should or should not be removed. Hearings shall be conducted by the officers of the labor organization (subject to § 417.19) in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with title IV of the Act, or with the provisions of this part 417: *Provided, however,* That no officer(s) accused of serious misconduct shall participate in such hearings in any capacity except as witness or counsel.

#### **§ 417.19 Assistant Secretary's representative.**

The Assistant Secretary shall appoint a representative or representatives whose functions shall be to supervise the hearing and vote. Such representative(s) shall have final authority to issue such rulings as shall be appropriate or necessary to insure a full and fair hearing and vote. Upon his own motion or upon consideration of the petition of any interested person the Assistant Secretary's Representative may disqualify any officer(s) or member(s) of the union from participation in the conduct of the hearing (except in the capacity of witness or counsel).

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964]

**§ 417.20 Notice of hearing.**

Notice of hearing, not less than 10 days in advance of the date set for such hearing, shall be transmitted to the officer or officers accused of serious misconduct and other interested persons, insofar as they are known, and shall inform them of (a) the time, place, and nature of the hearing; (b) the legal authority and jurisdiction under which the hearing is to be held; (c) the matters of fact and law asserted; and (d) their rights to challenge the appointment of certain of, or all of, the officers of the union to conduct the hearing in accordance with this subpart. The labor organization shall promptly inform its members of the provisions of the notice. Copies of the notice shall be made available for inspection at the office of the labor organization.

**§ 417.21 Transcript.**

It shall be within the discretion of the Assistant Secretary to require an official reporter to make an official transcript of the hearings. In the event he does so require, copies of the official transcript shall be made available upon request addressed to the Assistant Secretary in accordance with the provisions of part 70 of this title.

[50 FR 31310, Aug. 1, 1985, as amended at 63 FR 33779, June 19, 1998]

**§ 417.22 Vote among members of the labor organization.**

Within a reasonable time after completion of the hearing, and after proper notice thereof, a secret ballot vote shall be conducted among the members of the labor organization in good standing on the issue of whether the accused officer or officers shall be removed from office. The vote shall be in accordance with the constitution and by-laws of the labor organization insofar as they are not inconsistent with the provisions of the Act or this part 417. The presiding officer or officers at the taking of such vote shall entertain objections or suggestions as to the rules for conducting the vote, eligibility of voters, and such other matters as may be pertinent; and shall rule on such questions, shall establish procedures for the conduct of the vote, and for tabulation of the ballots; and shall ap-

point observers and compile a list of eligible voters. All rulings of the presiding officer or officers shall be subject to the provisions of § 417.19.

**§ 417.23 Report to the Assistant Secretary.**

Following completion of the hearing and vote, the Assistant Secretary's Representative shall file a report with the Assistant Secretary setting out the results of the balloting; and pertinent details of the hearing and vote. Notice thereof shall be given to the membership of such labor organization promptly and copies shall be furnished to all interested parties.

**§ 417.24 Appeal to the Assistant Secretary.**

(a) Within 15 days after mailing of the report of the Assistant Secretary's Representative, any interested party may appeal the conduct of the hearing or vote or both by filing written exceptions with the Assistant Secretary. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Assistant Secretary, or an appeal containing such matter or lacking in specifications may be dismissed.

(b) Upon review of the whole record, the Assistant Secretary shall issue a decision or may order further hearing, a new vote, or such further proceedings as he deems appropriate.

[29 FR 8264, July 1, 1964, as amended at 50 FR 31310, Aug. 1, 1985]

**§ 417.25 Certification of results of vote.**

Upon receipt of the report of the Assistant Secretary's Representative on the hearing and vote on removal, the Assistant Secretary shall certify the results of the vote to the court as required by section 402(c) of the Act.

**PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959**

- Sec.
- 451.1 Introductory statement.
- 451.2 General.
- 451.3 Requirements of section 3(i).
- 451.4 Labor organizations under section 3(j).

## § 451.1

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451.5 “State or local central body.”

451.6 Extraterritorial application.

AUTHORITY: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary’s Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14388, Dec. 27, 1963, unless otherwise noted.

### § 451.1 Introductory statement.

(a) This part discusses the meaning and scope of sections 3(i) and 3(j) of the Labor-Management Reporting and Disclosure Act of 1959<sup>1</sup> (hereinafter referred to as the Act). These provisions define the terms “labor organization” and “labor organization \* \* \* in an industry affecting commerce” for purposes of the Act.<sup>2</sup>

(b) The Act imposes on labor organizations various obligations and prohibitions relating generally, among other things, to the reporting of information and election and removal of officers. Requirements are also imposed on the officers, representatives, and employees of labor organizations. In addition, certain rights are guaranteed the members thereof. It thus becomes a matter of importance to determine what organizations are included within the applicability of the Act.

(c) The provisions of the Act, other than title I and amendments to other statutes contained in section 505 and title VII, are subject to the general investigatory authority of the Secretary of Labor embodied in section 601<sup>3</sup> (and delegated by him to the Assistant Secretary), which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to

violate such provisions. The correctness of an interpretation of these provisions can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice. Interpretations of the Assistant Secretary with respect to the meaning of the terms “labor organization” and “labor organization \* \* \* in an industry affecting commerce,” as used in the Act, are set forth in this part to provide those affected by the provisions of the Act with “a practical guide \* \* \* as to how the office representing the public interest in its enforcement will seek to apply it.”<sup>4</sup>

(d) To the extent that prior opinions and interpretations relating to the meaning of “labor organization” and “labor organization \* \* \* in an industry affecting commerce” are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14388, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

### § 451.2 General.

A “labor organization” under the Act must qualify under section 3(i). It must also be engaged in an industry affecting commerce. In accordance with the broad language used and the manifest congressional intent, the language will be construed broadly to include all

<sup>1</sup>73 Stat. 520, 521, 29 U.S.C. 402.

<sup>2</sup>It should be noted that the definition of the term “labor organization,” as well as other terms, in section 3 are for purposes of those portions of the Act included in titles I, II, III, IV, V (except section 505) and VI. They do not apply to title VII, which contains amendments of the National Labor Relations Act, as amended, nor to section 505 of title V, which amends section 302 (a), (b), and (c) of the Labor Management Relations Act, 1947, as amended. The terms used in title VII and section 505 of title V have the same meaning as they have under the National Labor Relations Act, as amended, and the Labor Management Relations Act, 1947, as amended.

<sup>3</sup>Sec. 601, 73 Stat. 539, 29 U.S.C. 521.

<sup>4</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134, 138.

labor organizations of any kind other than those clearly shown to be outside the scope of the Act.

#### § 451.3 Requirements of section 3(i).

(a) *Organizations which deal with employers.* (1) The term “labor organization” includes “any organization of any kind, any agency, or employee representation committee, group, association, or plan \* \* \* in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, \* \* \*.” The quoted language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. While it is necessary for employees to participate therein, such participating employees need not necessarily be the employees of the employer with whom the organization deals. In determining who are “employees” for purposes of this provision, resort must be had to the broad definition of “employee” contained in section 3(f) of the Act.<sup>5</sup> It will be noted that the term includes employees whose work has ceased for certain specified reasons, including any current labor dispute.

(2) To come within the quoted language in section 3(i) the organization must exist for the purpose, in whole or in part, of dealing with employers concerning grievances, etc. In determining whether a given organization exists wholly or partially for such purpose, consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well. Thus, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are “labor

organizations”, even though they have no formal organizational structure.<sup>6</sup>

(3) Since the types of labor organizations described in subparagraph (2) of this paragraph are those which deal with employers, it is necessary to consider the definition of “employer” contained in section 3(e) of the Act in determining the scope of the language under consideration.<sup>7</sup> The term “employer” is broadly defined to include “any employer or any group or association of employers engaged in an industry affecting commerce” which is “an employer within the meaning of any law of the United States relating to the employment of any employees \* \* \*.” Such laws would include, among others, the Railway Labor Act, as amended, the Fair Labor Standards Act, as amended, the Labor Management Relations Act, as amended, and the Internal Revenue Code. The fact that employers may be excluded from the application of any of the foregoing acts would not preclude their qualification as employers for purposes of this Act. For example, employers of agricultural labor who are excluded from the application of the Labor Management Relations Act, as amended, would appear to be employers within the meaning of this Act.

(4) In defining “employer,” section 3(e) expressly excludes the “United States or any corporation wholly owned by the Government of the United States or any State or political

<sup>6</sup>*National Labor Relations Board v. Cabot Carbon Co.*, 360 U.S. 203.

<sup>7</sup>Sec. 3(e) reads: “‘Employer’ means any employer or any group or association of employers engaged in an industry affecting commerce, (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.”

<sup>5</sup>Sec. 3(f) reads: “‘Employee’ means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.”

#### § 451.4

subdivision thereof.” The term “political subdivision” includes, among others, counties and municipal governments. A labor organization composed entirely of employees of the governmental entities excluded by section 3(e) would not be a labor organization for the purposes of the Act with the exception of a labor organization composed of employees of the United States Postal Service which is subject to the Act by virtue of the Postal Reorganization Act of 1970. (Organizations composed of Federal government employees that meet the definition of “labor organization” in the Civil Service Reform Act or the Foreign Service Act are subject to the standards of conduct requirements of those Acts, 5 U.S.C. 7120 and 22 U.S.C. 4117, respectively. In addition, labor organizations subject to the Congressional Accountability Act of 1995 are subject to the standards of conduct provisions of the Civil Service Reform Act pursuant to 2 U.S.C. 1351(a)(1). The regulations implementing the standards of conduct requirements are contained in parts 457—459 of this title.) However, in the case of a national, international or intermediate labor organization composed both of government locals and non-government or mixed locals, the parent organization as well as its mixed and non-government locals would be “labor organizations” and subject to the Act. In such case, the locals which are composed entirely of government employees would not be subject to the Act, although elections in which they participate for national officers or delegates would be so subject.<sup>8</sup>

(b) *Organizations which may or may not deal with employers.* Regardless of whether it deals with employers concerning terms and conditions of employment and regardless of whether it is composed of employees, any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce and which is subordinate to a national or international labor organization is a “labor organization” for purposes of the Act. Included are the area con-

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ferences and the joint councils of the International Brotherhood of Teamsters and similar units of other national and international labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977; 50 FR 31310, Aug. 1, 1985; 62 FR 6093, Feb. 10, 1997]

#### § 451.4 Labor organizations under section 3(j).

(a) *General.* Section 3(j) sets forth five categories of labor organizations which “shall be deemed to be engaged in an industry affecting commerce” within the meaning of the Act. Any organization which qualifies under section 3(i) and falls within any one of these categories listed in section 3(j) is subject to the requirements of the Act.

(b) *Certified employee representatives.* This category includes all organizations certified as employee representatives under the Railway Labor Act, as amended, or under the National Labor Relations Act, as amended.

(c) *Labor organizations recognized or acting as employee representatives though not certified.* This category includes local, national, or international labor organizations which, though not formally certified, are recognized or acting as the representatives of employees of an employer engaged in an industry affecting commerce. Federations, such as the American Federation of Labor and Congress of Industrial Organizations, are included in this category,<sup>9</sup> although expressly excepted from the election provisions of the Act.<sup>10</sup>

(d) *Organizations which have chartered local or subsidiary bodies.* This category includes any labor organization that has chartered a local labor organization or subsidiary body which is within either of the categories discussed in paragraph (b) or (c) of this section. Under this provision, a labor organization not otherwise subject to the Act, such as one composed of Government employees, would appear to be “engaged in an industry affecting commerce” and, therefore, subject to the Act if it charters one or more local

<sup>8</sup> See also, § 452.12 of this chapter which discusses the election provisions of the Act.

<sup>9</sup> See *National Labor Relations Board v. Highland Park Mfg. Co.*, 341 U.S. 322. See also paragraph (d) of this section.

<sup>10</sup> Act, sec. 401(a).

labor organizations which deal with an “employer” as defined in section 3(c).<sup>11</sup> This category includes, among others, a federation of national or international organizations which directly charters local bodies.<sup>12</sup>

(e) *Local or subordinate bodies which have been chartered by a labor organization.* This category includes any labor organization that has been chartered by an organization within either of the categories discussed in paragraph (b) or (c) of this section as the local or subordinate body through which such employees may enjoy membership or become affiliated with the chartering organization.

(f) *Intermediate bodies.* Included in this category is any conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the categories discussed in paragraphs (b), (c), (d) and (e) of this section. Excluded from this definition, however, are State or local central bodies.<sup>13</sup> (It should be noted that the above listing is included in the Act as words of illustration, not of limitation.) The following is a description of typical intermediate bodies:

(1) *Conference.* A conference is an organic body within a national or international labor organization formed on a geographical area, trade division, employer-wide or similar basis and composed of affiliate locals of the parent national or international organization. The various conferences of the International Brotherhood of Teamsters, for example, are in this category.

(2) *General committees.* Typical of those bodies are the general committees of the railroad labor organizations. The term includes any subordinate unit of a national railroad labor organization, regardless of the title or designation of such unit, which under the constitution and bylaws of the organization of which it is a unit, is authorized to represent that organization on a particular railroad or portion

thereof in negotiating with respect to wages and working conditions.<sup>14</sup> General committees are sometimes known as system boards of adjustment, general grievance committees, and general committees of adjustment. They are to be distinguished from system boards of adjustment established under the Railway Labor Act, which are composed of management and labor members. These joint labor-management boards are not included within the definition of a labor organization under the Act.

(3) *Joint or system boards.* As mentioned above, in connection with railroad labor organizations the term “general committee” includes system boards. However, as used here the term has a broader meaning and includes, among others, boards which have members from more than one labor organization.

(4) *Joint councils.* A joint council is composed of locals not necessarily of the same national or international labor organization located in a particular area, such as a city or county. These bodies are sometimes called joint boards, joint executive boards, joint councils, or district councils. Included, for example, are councils of building and construction trades labor organizations.

[28 FR 14388, Dec. 27, 1963, as amended at 42 FR 59071, Nov. 15, 1977]

#### § 451.5 “State or local central body.”

(a) The definition of “labor organization” in section 3(i) and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5) both except from the term “labor organization” a “State or local central body.” As used in these two sections, the phrase *State or local central body* means an organization that:

(1) Is chartered by a federation of national or international unions; and

(2) Admits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body’s territory and any local unions

<sup>11</sup> See § 451.3(a).

<sup>12</sup> See also paragraph (c) of this section.

<sup>13</sup> For discussion of State and local central bodies see § 451.5.

<sup>14</sup> See definition of term “General Committee” under Railroad Retirement Act in 20 CFR 201.1(k).

## § 451.6

or subordinate bodies directly affiliated with the federation in such territory; and

(3) Exists primarily to carry on educational, legislative and coordinating activities.

(b) The term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions.

[29 FR 8060, June 25, 1964]

### § 451.6 Extraterritorial application.

(a) It is not the purpose of the Act to impose on foreign labor organizations any regulation of the activities they carry on under the laws of the countries in which they are domiciled or have their principal place of business. The applicability of the Act is limited to the activities of persons or organizations within the territorial jurisdiction of the United States. The foregoing would be applicable, for example, to Canadian locals affiliated with international labor organizations organized within the United States.

(b) On the other hand, labor organizations otherwise subject to the Act are not relieved of the requirements imposed upon them with respect to actions taken by them in the United States or which will have effect in the United States, by virtue of the fact that they have foreign members or affiliates that participate in these actions. For example, a national or international labor organization which conducts its required election of officers by referendum or at a convention of delegates must comply with the election provisions of the Act,<sup>15</sup> even though members of foreign locals participate in the balloting, or delegates of foreign locals participate in the election at the convention.

(c) Similarly, the provisions of the Act with respect to imposition of trusteeships<sup>17</sup> are applicable to United States national or international labor organizations subject to this Act even though the action of the United States

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organization is taken with respect to a foreign local.

## PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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<sup>15</sup> [Reserved]

<sup>16</sup> See § 452.13 of this chapter.

<sup>17</sup> See title III of the Act.



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AUTHORITY: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 38 FR 18324, July 9, 1973, unless otherwise noted.

## Subpart A—General Considerations

### § 452.1 Introductory statement.

(a) This part discusses the meaning and scope of the provisions of title IV of the Labor-Management Reporting and Disclosure Act<sup>1</sup> (hereinafter referred to as the Act), which deal with the election of officers of labor organizations. These provisions require periodic election of union officers, and prescribe minimum standards to insure that such elections will be fairly conducted. Specific provisions are included to assure the right of union members to participate in selecting their officers without fear of interference or reprisal, and to protect the right to nominate candidates, run for office, and vote in officer elections. Title IV also sets forth the rights of candidates, provides for secret ballots in appropriate cases, and requires notice of nominations and elections, preservation of election records, and other safeguards to insure fair elections. However, the Act does not prescribe complete, detailed procedures for the nomination and election of union officers.

(b) Interpretations of the Assistant Secretary with respect to the election provisions of title IV are set forth in

<sup>1</sup>73 Stat. 532-535, 29 U.S.C. 481-483.

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this part to provide those affected by these provisions of the Act with “a practical guide \* \* \* as to how the office representing the public interest in its enforcement will seek to apply it.”<sup>2</sup> The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties unless and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently announces that a prior interpretation is incorrect. However, the fact that a particular problem is not discussed in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice.

(c) To the extent that prior opinions and interpretations relating to the election of officers of labor organizations under the Act are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

### § 452.2 Application of union constitution and bylaws.

Elections required to be held as provided in title IV are to be conducted in accordance with the validly adopted constitution and bylaws of the labor organizations insofar as they are not inconsistent with the provisions of the Act.

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

### § 452.3 Interpretations of constitution and bylaws.

The interpretation consistently placed on a union's constitution by the responsible union official or governing

<sup>2</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134 at 138 (1944).

body will be accepted unless the interpretation is clearly unreasonable.<sup>3</sup>

#### § 452.4 Investigatory provision—application.

The provisions of section 601 of the Act provide general investigatory authority to investigate alleged violations of the Act including violations of title IV. However, section 601 in and of itself provides no remedy, and the section must be read in conjunction with the remedy and statutory scheme of section 402, i.e., exhaustion of internal union remedies and a complaint to the Secretary following completion of the election before suit can be filed. In view of the remedy provided, an investigation prior to completion of an election may have the effect of publicizing the activities or unsubstantiated allegations of one faction to the prejudice of the opposition. To avoid this result, and as a matter of sound statutory construction, the Department will exercise its investigatory authority only in circumstances in which the outcome of the election could not be affected by the investigation.<sup>4</sup> Thus, the Department ordinarily will employ its investigatory authority only where the procedural requirements for a title IV investigation have been met; but in unusual circumstances or where necessary to collect or preserve evidence an investigation may be conducted after the conclusion of balloting.

#### § 452.5 Effect of violation on outcome.

Since the remedy under section 402 is contingent upon a finding by the court, among other things, that the violation “may have affected the outcome of an election”<sup>5</sup> the Secretary as a matter of policy will not file suit to enforce the election provisions unless the viola-

tions found are such that the outcome may have been affected.<sup>6</sup>

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

#### § 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Assistant Secretary.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985]

### Subpart B—Other Provisions of the Act Affecting Title IV

#### § 452.7 Bill of Rights, title I.

The provisions of title I, “Bill of Rights of Members of Labor Organizations”<sup>7</sup> (particularly section 101(a)(1) “Equal Rights,” section 101(a)(2) “Freedom of Speech and Assembly,” and section 101(a)(5) “Safeguards against Improper Disciplinary Action”) are related to the rights pertaining to elections. Direct enforcement of title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.<sup>8</sup> The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization’s constitution and by-laws.<sup>9</sup>

#### § 452.8 Trusteeship provisions, title III.

Placing a labor organization under trusteeship consistent with title III, may have the effect of suspending the application of title IV to the trustee organization (see § 452.15).

#### § 452.9 Prohibition against certain persons holding office; section 504.

Among the safeguards for labor organizations provided in title V is a prohibition against the holding of office by

<sup>3</sup> *English v. Cunningham*, 282 F.2d 848 (C.A.D.C. 1960).

<sup>4</sup> However questions involving the use of force or violence or the threat of the use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act will be referred promptly to the Department of Justice for appropriate action.

<sup>5</sup> Act, sec. 402(b) (29 U.S.C. 482).

<sup>6</sup> *Dunlop v. Bachowski*, 421 U.S. 560, 570 (1975), citing *Wirtz v. Glass Bottle Blowers*, 389 U.S. 463, 472 (1968) and *Schonfeld v. Wirtz*, 285 F. Supp. 705, 707-708 (S.D.N.Y. 1966).

<sup>7</sup> 73 Stat. 522, 29 U.S.C. 411.

<sup>8</sup> But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

<sup>9</sup> Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

certain classes of persons.<sup>10</sup> This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if, following the procedures set forth in the Act, it is determined that their service would not be contrary to the purposes of the Act.

[50 FR 31310, Aug. 1, 1985]

**§ 452.10 Retaliation for exercising rights.**

Section 609, which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610, which makes it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under title IV.

**Subpart C—Coverage of Election Provisions**

**§ 452.11 Organizations to which election provisions apply.**

Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations and to local labor

organizations.<sup>11</sup> The provisions do not apply to State and local central bodies, which are explicitly excluded from the definition of “labor organization”.<sup>12</sup> The characterization of a particular organizational unit as a “local,” “intermediate,” etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.

**§ 452.12 Organizations comprised of government employees.**

An organization composed entirely of government employees (other than employees of the United States Postal Service) is not subject to the election provisions of the Act. Section 3(e) of the Act, defining the term “employer,” specifically excludes the United States Government, its wholly owned corporations, and the States and their political subdivisions from the scope of that term, and section 3(f) defines an “employee” as an individual employed by an “employer.” Since a “labor organization” is defined in section 3(i) as one in which “employees” participate and which exists in whole or in part for the purpose of “dealing with employers,” an organization composed entirely of government employees would not be a “labor organization”<sup>13</sup> as that term is defined in the Act. However, section 1209 of the Postal Reorganization Act provides that organizations of employees of the United States Postal Service shall be subject to the Labor-Management Reporting and Disclosure Act. A national, international or intermediate labor organization which has some locals of government employees not covered by the Act and other locals which are mixed or are composed entirely of employees covered by the Act would be subject to the election requirements of the Act. Its mixed locals

<sup>11</sup> For the scope of the term “labor organization,” see part 451 of this chapter.

<sup>12</sup> See § 451.5 of this chapter for a definition of “State or local central body.”

<sup>13</sup> Most labor organizations composed of Federal Government employees are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, or the Foreign Service Act, 22 U.S.C. 4117. The regulations implementing those statutory provisions are contained in parts 457–459 of this chapter.

<sup>10</sup> Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Public Law 98–473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.

would also be subject to the Act. The requirements would not apply to locals composed entirely of government employees not covered by the Act, except with respect to the election of officers of a parent organization which is subject to those requirements or the election of delegates to a convention of such parent organization, or to an intermediate body to which the requirements apply.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

#### § 452.13 Extraterritorial application.

Although the application of the Act is limited to the activities of persons and organizations within the territorial jurisdiction of the United States,<sup>14</sup> an international, national or intermediate body is not exempted from the requirements of the Act by virtue of the participation of its foreign locals or foreign membership in its elections. For example, votes received from Canadian members in referendum elections held by an international must have been cast under procedures meeting the minimum requirements of the Act, and Canadian delegates participating at conventions of the international at which officers are elected must have been elected by secret ballot.

#### § 452.14 Newly formed or merged labor organizations.

The initial selection of officers by newly formed or merged labor organizations is not subject to the requirements of title IV.<sup>15</sup> Such labor organizations may have temporary or provisional officers serve until a regular election subject to the Act can be scheduled. An election under all the safeguards prescribed in these regulations must be held within a reasonable period after the organization begins to function. What would be a reasonable time for this purpose depends on the circumstances, but after the formation or consolidation of the labor organization, a regular election subject to title

IV may not be deferred longer than the statutory period provided for that type of organization. However, when a pre-existing labor organization changes its affiliation without substantially altering its basic structure or identity the terms of its officers may not be extended beyond the maximum period specified by the Act for the type of labor organization involved.

#### § 452.15 Effect of trusteeship.

Establishment of a valid trusteeship may have the effect of suspending the operation of the election provisions of the Act. When the autonomy otherwise available to a subordinate labor organization has been suspended consistent with the provisions of title III of the Act, officers of the organization under trusteeship may be relieved of their duties and temporary officers appointed by the trustee if necessary to assist him in carrying out the purposes for which the trusteeship was established. However, when a regular election of officers or an election for purposes of terminating the trusteeship is being held during the trusteeship, title IV would apply.

#### § 452.16 Offices which must be filled by election.

Section 401 of the Act identifies the types of labor organizations whose officers must be elected and prescribes minimum standards and procedures for the conduct of such elections. Under that section officers of national or international labor organizations (except federations of such organizations), local labor organizations, and intermediate bodies such as general committees, system boards, joint boards, joint councils, conferences, certain districts, district councils and similar organizations must be elected.<sup>16</sup>

#### § 452.17 Officer.

Section 3(n) of the Act defines the word "officer" and it is this definition which must be used as a guide in determining what particular positions in a

<sup>14</sup> See § 451.6 of this chapter.

<sup>15</sup> However, the other provisions of the Act are applicable immediately upon such formation or merger.

<sup>16</sup> See § 452.23 for a discussion of the frequency with which the different types of labor organizations must conduct elections of officers. See part 451 of this chapter for the scope of the term "labor organization."

labor organization are to be filled in the manner prescribed in the Act. For purposes of the Act, “officer” means “any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.”

**§ 452.18 Constitutional officers.**

A constitutional officer refers to a person holding a position identified as an officer by the constitution and bylaws of the labor organization. Thus, for example, a legislative representative of a labor organization who performs no executive functions and whose duties are confined to promoting the interests of members in legislative matters is nevertheless an officer who is required to be elected where the labor organization’s constitution identifies the holder of such a position as an officer. On the other hand, legislative representatives who are required to be elected by the constitution and bylaws of a labor organization are not considered to be officers within the meaning of the Act if they are not designated as such by the constitution, are not members of any executive board or similar governing body, and do not perform executive functions. As defined in the Act, however, the term “officer” is not limited to individuals in positions identified as such or provided for in the constitution or other organic law of the labor organization.<sup>17</sup> The post of Honorary President, President Emeritus or Past President that is to be assumed by the retiring chief executive officer of a union would not be an officer position unless it is designated as an officer position by the union’s constitution, or the holder of the position performs executive functions or serves on an executive board or similar governing body.

**§ 452.19 Executive functions.**

The definitional phrase “a person authorized to perform the functions of president, vice president, secretary,

treasurer, or other executive functions of a labor organization” brings within the term “officer” any person who in fact has executive or policy-making authority or responsibility, although he may not occupy a position identified as an officer under the constitution and bylaws of the organization. Authorization to perform such functions need not be contained in any provision of the constitution or bylaws or other document but may be inferred from actual practices or conduct. On the other hand, a person is not an officer merely because he performs ministerial acts for a designated officer who alone has responsibility. The normal functions performed by business agents and shop stewards, such as soliciting memberships, presenting or negotiating employee grievances within the work place, and negotiating contracts are not “other executive functions” as that phrase is used in section 3(n) of the Act. However, a directing business representative or a business manager usually exercises such a degree of executive authority as to be considered an officer and, therefore, must be elected. The duties normally pertaining to membership on a bargaining committee do not come within the phrase “other executive functions.” However, persons occupying such non-executive positions may be “officers” if they are ex officio members of the organization’s executive board (or similar governing body) or if the constitution or bylaws of the union designate such positions as officers.

**§ 452.20 Nature of executive functions.**

(a) The functions that will bring a particular position with a title other than president, vice-president, secretary-treasurer, or executive board member within the definition of “officer” cannot be precisely defined. They are the functions typically performed by officers holding these titles in current labor union practice. Decisions in each case will require a practical judgment. As a general rule, a person will be regarded as being authorized to perform the functions of president if he is the chief or principal executive officer of the labor organization. Similarly, he will be regarded as being authorized to perform the functions of treasurer if he

<sup>17</sup> Cf. *NLRB v. Coca-Cola Bottling Co.*, 350 U.S. 264 (1956). See also, Daily Cong. Rec. 5867, Sen., Apr. 23, 1959.

has principal responsibility for control and management of the organization's funds and fiscal operation. A member of any group, committee, or board which is vested with broad governing or policymaking authority will be regarded as a member of an "executive board or similar governing body." The name or title that the labor organization assigns to the position is not controlling.

(b) The purpose of the election requirement of the Act is to assure that persons in positions of control in labor organizations will be responsive to the desires of the members.<sup>18</sup> Professional and other staff members of the labor organization who do not determine the organization's policies or carry on its executive functions and who are employed merely to implement policy decisions and managerial directives established by the governing officials of the organization are not officers and are not required to be elected.

#### § 452.21 Members of executive board.

The phrase "a member of its executive board or similar governing body" refers to a member of a unit identified as an executive board or a body, whatever its title, which is vested with functions normally performed by an executive board. Members of a committee which is actually the executive board or similar governing body of the union are considered officers within the meaning of section 3(n) of the Act even if they are not so designated by the union's constitution and bylaws. For example, members of an "Executive-Grievance Committee" which exercises real governing powers are officers under the Act. However, it should be noted that committee membership alone will not ordinarily be regarded as an indication of officer status, unless the committee or its members meet the requirements contained in section 3(n) of the Act.

#### § 452.22 Delegates to a convention.

Under certain circumstances, delegates to a convention of a national or international labor organization, or to an intermediate body, must be elected

by secret ballot among the members in good standing of the labor organization they represent even though such delegates are not "officers" of the organization. Such election is required by the Act<sup>19</sup> when the delegates are to nominate or elect officers of a national or international labor organization, or of an intermediate body. There is, of course, no requirement that delegates be elected in accordance with the provisions of title IV if they do not nominate or elect officers, unless delegates are designated as "officers" in the union's constitution and bylaws or unless, by virtue of their position, they serve as members of the executive board or similar governing body of the union.

### Subpart D—Frequency and Kinds of Elections

#### § 452.23 Frequency of elections.

The Act requires that all national and international labor organizations (other than federations of such labor organizations) elect their officers not less often than every five years. Officers of intermediate bodies, such as general committees, system boards, joint boards, joint councils, conferences, and certain districts, district councils and similar organizations, must be elected at least every four years, and officers of local labor organizations not less often than every three years.

#### § 452.24 Terms of office.

The prescribed maximum period of three, four, or five years is measured from the date of the last election.<sup>20</sup> It would not be consistent with these provisions of the Act for officers elected for the maximum terms allowable under the statute to remain in office after the expiration of their terms without a new election. Failure to hold an election for any office after the statutory period has expired constitutes a continuing violation of the Act, which may be brought to the attention of the Secretary in the form of

<sup>19</sup> Act, sec. 401(a) and 401(d) (29 U.S.C. 481).

<sup>20</sup> See § 452.14 for a discussion of the selection of officers in a new or newly-merged labor organization.

<sup>18</sup> See, for example, S. Rept. 187, 86th Cong., 1st sess., p. 7.

a complaint filed in accordance with the appropriate procedure. Title IV establishes only maximum time intervals between elections for officers. Labor organizations covered by these provisions may hold elections of officers with greater frequency than the specified maximum period. For example, a local labor organization is required to hold an election of officers at least once every three years, but it must hold an election every year if its governing rules so provide. It should be noted, moreover, that the provisions of title IV apply to all regular elections of officers in labor organizations subject to the Act. Thus, if a labor organization chooses to hold elections of officers more frequently than the statutory maximum intervals, it must observe the minimum standards set forth in title IV for the conduct of such elections.

**§ 452.25 Vacancies in office.**

Title IV governs the regular periodic elections of officers in labor organizations subject to the Act. No requirements are imposed with respect to the filling by election or other method of any particular office which may become vacant between such regular elections. If, for example, a vacancy in office occurs in a local labor organization, it may be filled by appointment, by automatic succession, or by a special election which need not conform to the provisions of title IV. The provisions of section 504 of the Act, which prohibit certain persons from holding office, are applicable to such situations. While the enforcement procedures of section 402 are not available to a member in connection with the filling of an interim vacancy, remedies may be available to an aggrieved member under section 102 of the Act or under any pertinent State or local law.

**§ 452.26 Elections in local labor organizations.**

Local labor organizations must conduct their regular elections of officers by secret ballot among the members in good standing. All members in good standing of the local labor organization must be given an opportunity to vote directly for candidates to fill the offices that serve them. Indirect election

of officers of a local labor organization would violate section 401(b) of the Act. For example, a procedure whereby the local's membership elects an executive board or some similar body by secret ballot which in turn selects (either from among its own membership or from the local's membership at large) the persons to fill specific offices would not comply with the Act.<sup>21</sup> Similarly, the election of a chief steward by the shop stewards would violate the Act if the chief steward, by virtue of that position, also serves as a member of the executive board, since members of the executive board must be elected directly by secret ballot among the members in good standing.

**§ 452.27 National, international organizations, and intermediate bodies.**

The officers of a national or international labor organization or of an intermediate body must be elected either directly by secret ballot among the members in good standing or indirectly by persons acting in a representative capacity who have been elected by secret ballot among all members in good standing.<sup>22</sup>

**§ 452.28 Unopposed candidates.**

An election of officers or delegates that would otherwise be required by the Act to be held by secret ballot need not be held by secret ballot when all candidates are unopposed and the following conditions are met: (a) The union provides a reasonable opportunity for nominations; (b) write-in votes are not permitted, as evidenced by provisions in the constitution and bylaws, by an official interpretation fairly placed on such documents, or by established union practice; and (c) the union complies with all other provisions of title IV.

**§ 452.29 Primary elections.**

Where a union holds primary elections or similar procedures for eliminating candidates prior to the final

<sup>21</sup> *Wirtz v. Independent Petroleum Workers of America*, 75 LRRM 2340, 63 L.C. ¶11,190 (N.D. Ind. 1970).

<sup>22</sup> See § 452.119 and following for discussion of indirect elections.



vote in connection with regular elections subject to these provisions, the primary election or other procedure must be conducted in accordance with the same standards required under the Act for the final election.

**§ 452.30 Run-off elections.**

A run-off election must meet the standards set forth in title IV if the original election was subject to the requirements of the Act. For example, if the run-off is to be held at the same meeting as the original election, the original notice of election must have so stated and all records pertaining to the run-off must be retained.

**§ 452.31 One candidate for several offices.**

Where a union constitution or other validly adopted rule provides that a single elected officer will perform the functions of more than one office, a separate election need not be held for each office.

**Subpart E—Candidacy for Office; Reasonable Qualifications**

**§ 452.32 Persons who may be candidates and hold office; secret ballot elections.**

Section 401(e) provides that in any election of officers required by the Act which is held by secret ballot, every member in good standing with the exceptions explained in sections following shall be eligible to be a candidate and to hold office. This provision is applicable not only to the election of officers in local labor organizations, but also to elections of officers in national or international and intermediate labor organizations where those elections are held by secret ballot referendum among the members, and to the election of delegates to conventions at which officers will be elected.

**§ 452.33 Persons who may be candidates and hold office; elections at conventions.**

Where elections of national or international labor organizations or of intermediate bodies are held at a convention of delegates elected by secret ballot, protection of the right to be a can-

didate and to hold office is afforded by the requirement in section 401(f) that the convention be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of title IV. If members in good standing are denied the right to be candidates by the imposition of unreasonable qualifications on eligibility for office such qualifications would be inconsistent with the provisions of title IV.

**§ 452.34 Application of section 504, LMRDA.**

The eligibility of members of labor organizations to be candidates and to hold office in such organizations is subject only to the provisions of section 504(a), which bars individuals convicted of certain crimes from holding office in labor organizations<sup>23</sup> and to reasonable qualifications uniformly imposed. A person who is barred from serving in union office by section 504(a) is not eligible to be a candidate. However, a labor organization may permit a person who is barred from holding union office by section 504(a) to be a candidate for office if the section 504 disability will terminate by the customary date for the installation of officers. A labor organization may within reasonable limits adopt stricter standards than those contained in section

<sup>23</sup>The disabling crimes set forth in the Act, sec. 504(a), as amended by sec. 803 of the Comprehensive Crime Control Act of 1984, Public Law 98-473, (29 U.S.C. 504) are robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, any felony involving abuse or misuse of a position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element."

NOTE: The U.S. Supreme Court, on June 7, 1965, held unconstitutional as a bill of attainder the section 504 provision which imposes criminal sanctions on Communist Party members for holding union office; *U.S. v. Brown*, 381 U.S. 437.

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504(a) by extending the period of disability or by barring from union office persons who have been convicted of crimes other than those specified.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

### § 452.35 Qualifications for candidacy.

It is recognized that labor organizations may have a legitimate institutional interest in prescribing minimum standards for candidacy and office-holding in the organization. On the other hand, a dominant purpose of the Act is to ensure the right of members to participate fully in governing their union and to make its officers responsive to the members. A basic assumption underlying the concept of "free and democratic elections," is that voters will exercise common sense and good judgment in casting their ballots. In union elections as in political elections, the good judgment of the members in casting their votes should be the primary determinant of whether a candidate is qualified to hold office. Therefore, restrictions placed on the right of members to be candidates must be closely scrutinized to determine whether they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

### § 452.36 Reasonableness of qualifications.

(a) The question of whether a qualification is reasonable is a matter which is not susceptible of precise definition, and will ordinarily turn on the facts in each case. However, court decisions in deciding particular cases have furnished some general guidelines. The Supreme Court in *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 at 499 (1968) held that:

Congress plainly did not intend that the authorization in section 401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach. The contrary is implicit in the legislative history of the section and in its wording that 'every member in good standing shall be eligible to be a candidate and to hold office \* \* \*'. This conclusion is buttressed by other provisions of the Act

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which stress freedom of members to nominate candidates for Office. Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents.

Union qualifications for office should not be based on assumptions that certain experience or qualifications are necessary. Rather it must be assumed that the labor organization members will exercise common sense and judgment in casting their ballots. "Congress' model of democratic elections was political elections in this country" (*Wirtz v. Local 6*, 391 U.S. at 502) and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

(b) Some factors to be considered, therefore, in assessing the reasonableness of a qualification for union office are:

(1) The relationship of the qualification to the legitimate needs and interests of the union;

(2) The relationship of the qualification to the demands of union office;

(3) The impact of the qualification, in the light of the Congressional purpose of fostering the broadest possible participation in union affairs;

(4) A comparison of the particular qualification with the requirements for holding office generally prescribed by other labor organizations; and

(5) The degree of difficulty in meeting a qualification by union members.

### § 452.37 Types of qualifications.

Ordinarily the following types of requirements may be considered reasonable, depending on the circumstances in which they are applied and the effect of their application:

(a) *Period of prior membership.* It would ordinarily be reasonable for a local union to require a candidate to have been a member of the organization for a reasonable period of time, not exceeding two years, before the election. However, if a member is involuntarily compelled to transfer from

one local to another, such a requirement would not be reasonable if he is not given credit for his prior period of membership.

(b) *Continuity of good standing.* A requirement of continuous good standing based on punctual payment of dues will be considered a reasonable qualification only if (1) it provides a reasonable grace period during which members may make up missed payments without loss of eligibility for office,<sup>24</sup> and (2) the period of time involved is reasonable. What are reasonable periods of time for these purposes will depend upon the circumstances. Section 401(e) of the Act provides that a member whose dues have been withheld by the employer for payment to the labor organization pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be declared ineligible to vote or be a candidate for office by reason of alleged delay or default in the payment of dues. If during the period allowed for payment of dues in order to remain in good standing, a member on a dues checkoff system has no earnings from which dues can be withheld, section 401(e) does not relieve the member of the responsibility of paying his dues in order to remain in good standing.

#### § 452.38 Meeting attendance requirements.

(a) It may be reasonable for a labor organization to establish a requirement of attendance at a specified number of its regular meetings during the period immediately preceding an election, in order to insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization. In the past, it was ordinarily considered reasonable to require at-

tendance at no more than 50 percent of the meetings over a period not exceeding two years. Experience has demonstrated that it is not feasible to establish arbitrary guidelines for judging the reasonableness of such a qualification. Its reasonableness must be gauged in the light of all the circumstances of the particular case, including not only the frequency of meetings, the number of meetings which must be attended and the period of time over which the requirement extends, but also such factors as the nature, availability and extent of excuse provisions, whether all or most members have the opportunity to attend meetings, and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application.<sup>25</sup>

(a—1) In *Steelworkers, Local 3489 v. Usery*, 429 U.S. 305, 94 LRRM 2203, 79 L.C. ¶11,806 (1977), the Supreme Court found that this standard for determining validity of meeting attendance qualifications was the type of flexible result that Congress contemplated when it used the word “reasonable.” The Court concluded that Congress, in guaranteeing every union member the opportunity to hold office, subject only to “reasonable qualifications,” disabled unions from establishing eligibility qualifications as sharply restrictive of the openness of the union political process as the Steelworkers’ attendance rule. The rule required attendance at fifty percent of the meetings for three years preceding the election unless prevented by union activities or working hours, with the result that 96.5 percent of the members were ineligible.

(b) Other guidance is furnished by lower court decisions which have held

<sup>24</sup>In *Goldberg v. Amarillo General Drivers, Teamsters Local 577*, 214 F. Supp. 74 (N.D. Tex. 1963), the disqualification of five nominees for union office for failure to satisfy a constitutional provision requiring candidates for office to have maintained continuous good standing for two years by paying their dues on or before the first business day of the current month, in advance, was held to be unreasonable. See also *Wirtz v. Local Unions No. 9, 9-A and 9-B, International Union of Operating Engineers*, 254 F. Supp. 980 (D. Colo. 1965), aff’d, 366 F. 2d 911 (CA 10 1966), vacated as moot 387 U.S. 96 (1967).

<sup>25</sup>If a meeting attendance requirement disqualifies a large portion of members from candidacy, that large antidemocratic effect alone may be sufficient to render the requirement unreasonable. In *Doyle v. Brock*, 821 F.2d 778 (D.C. Circuit 1987), the court held that the impact of a meeting attendance requirement which disqualified 97% of the union’s membership from candidacy was by itself sufficient to make the requirement unreasonable notwithstanding any of the other factors set forth in 29 CFR 452.38(a).

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particular meeting attendance requirements to be unreasonable under the following circumstances: One meeting during each quarter for the three years preceding nomination, where the effect was to disqualify 99 percent of the membership (*Wirtz v. Independent Workers Union of Florida*, 65 LRRM 2104, 55 L.C. par. 11,857 (M.D. Fla., 1967)); 75 percent of the meetings held over a two-year period, with absence excused only for work or illness, where over 97 percent of the members were ineligible (*Wirtz v. Local 153, Glass Bottle Blowers Ass'n*, 244 F. Supp. 745 (W.D. Pa., 1965), order vacating decision as moot, 372 F. 2d 86 (C.A. 3 1966), reversed 389 U.S. 463; decision on remand, 405 F.2d 176 (C.A. 3 1968)); *Wirtz v. Local 262, Glass bottle Blowers Ass'n*, 290 F. Supp. 965 (N.D. Cal., 1968)); attendance at each of eight meetings in the two months between nomination and election, where the meetings were held at widely scattered locations within the State (*Hodgson v. Local Union No. 624 A-B, International Union of Operating Engineers*, 80 LRRM 3049, 68 L.C. par. 12,816 (S.D. Miss. Feb. 19, 1972)); attendance at not less than six regular meetings each year during the twenty-four months prior to an election which has the effect of requiring attendance for a period that must begin no later than eighteen months before a biennial election (*Usery v. Local Division 1205, Amalgamated Transit Union*, 545 F. 2d 1300 (C.A. 1, 1976)).

[38 FR 18324, July 3, 1973; as amended at 42 FR 39105, Aug. 2, 1977; 42 FR 41280, Aug. 16, 1977; 42 FR 45306, Sept. 9, 1977; 50 FR 31311, Aug. 1, 1985; 60 FR 57178, Nov. 14, 1995]

## § 452.39 Participation in insurance plan.

In certain circumstances, in which the duties of a particular office require supervision of an insurance plan in more than the formal sense, a union may require candidates for such office to belong to the plan.

## § 452.40 Prior office holding.

A requirement that candidates for office have some prior service in a lower office is not considered reasonable.<sup>26</sup>

<sup>26</sup> *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 at 504. The Court stated that the union, in applying such a

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## § 452.41 Working at the trade.

(a) It would ordinarily be reasonable for a union to require candidates to be employed at the trade or even to have been so employed for a reasonable period. In applying such a rule an unemployed member is considered to be working at the trade if he is actively seeking such employment. Such a requirement should not be so inflexible as to disqualify those members who are familiar with the trade but who because of illness, economic conditions, or other good reasons are temporarily not working.

(b) It would be unreasonable for a union to prevent a person from continuing his membership rights on the basis of failure to meet a qualification which the union itself arbitrarily prevents the member from satisfying. If a member is willing and able to pay his union dues to maintain his good standing and his right to run for office, it would be unreasonable for the union to refuse to accept such dues merely because the person is temporarily unemployed. Where a union constitution requires applicants for membership to be actively employed in the industry served by the union, a person who becomes a member would not be considered to forfeit his membership in the union or any of the attendant rights of membership merely because he is discharged or laid off.

(c) Ordinarily members working part-time at the trade may not for that reason alone be denied the right to run for office.

rule, “\* \* \* assumes that rank and file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate’s performance in other offices. But Congress’ model of democratic elections was political elections in this Country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. Local 6 made no showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when, voting as union members \* \* \*.”

(d) A labor organization may postpone the right to run for office of members enrolled in a bona fide apprenticeship program until such members complete their apprenticeship.

**§ 452.42 Membership in particular branch or segment of the union.**

A labor organization may not limit eligibility for office to particular branches or segments of the union where such restriction has the effect of depriving those members who are not in such branch or segment of the right to become officers of the union.<sup>27</sup>

**§ 452.43 Representative categories.**

In the case of a position which is representative of a unit defined on a geographic, craft, shift, or similar basis, a labor organization may by its constitution or bylaws limit eligibility for candidacy and for holding office to members of the represented unit. For example, a national or international labor organization may establish regional vice-presidencies and require that each vice-president be a member of his respective region. This kind of limitation would not be considered reasonable, however, if applied to general officers such as the president, vice-president, recording secretary, financial secretary, and treasurer. If eligibility of delegates to a convention which will elect general officers is limited to special categories of members, all such categories within the organization must be represented.

**§ 452.44 Dual unionism.**

While the Act does not prohibit a person from maintaining membership or holding office in more than one labor organization, it would be considered reasonable for a union to bar from candidacy for office persons who hold membership in a rival labor organization.

**§ 452.45 Multiple office holding.**

An officer may hold more than one office in a labor organization so long as

this is consistent with the constitution and bylaws of the organization.

**§ 452.46 Characteristics of candidate.**

A labor organization may establish certain restrictions on the right to be a candidate on the basis of personal characteristics which have a direct bearing on fitness for union office. A union may, for example, require a minimum age for candidacy. However, a union may not establish such rules if they would be inconsistent with any other Federal law. Thus, it ordinarily may not limit eligibility for office to persons of a particular race, color, religion, sex, or national origin since this would be inconsistent with the Civil Rights Act of 1964.<sup>28</sup> Nor may it establish a general compulsory retirement age or comparable age restriction on candidacy since this would be inconsistent with the Age Discrimination in Employment Act of 1967, as amended. A union may not require candidates for office to be registered voters and to have voted in public elections during the year preceding their nominations. Nor may it require that candidates have voted in the previous union election to be eligible. Such restrictions may not be said to be relevant to the members' fitness for office.

[53 FR 8751, Mar. 17, 1988, as amended at 53 FR 23233, June 21, 1988]

**§ 452.47 Employer or supervisor members.**

Inasmuch as it is an unfair labor practice under the Labor Management Relations Act (LMRA) for any employer (including persons acting in that capacity) to dominate or interfere with the administration of any labor organization, it follows that employers, while they may be members, may not be candidates for office or serve as officers. Thus, while it is recognized that in some industries, particularly construction, members who become supervisors, or contractors traditionally keep their union membership as a form of job security or as a means of retaining union benefits, such persons may

<sup>27</sup> *Hodgson v. Local Unions No. 18, etc., IUOE*, 440 F. 2d 485 (C.A. 6), cert. den. 404 U.S. 852 (1971); *Hodgson v. Local 610, Unit. Elec. Radio & Mach. Work. of Am.*, 342 F. Supp. 1344 (W.D. Pa. 1972).

<sup>28</sup> *Shultz v. Local 1291, International Longshoremen's Association*, 338 F. Supp. 1204 (E.D. Pa.), aff'd, 461 F.2d 1262 (C.A. 3 1972).

not be candidates for or hold office.<sup>29</sup> Whether a restriction on officeholding by members who are group leaders or others performing some supervisory duties is reasonable depends on the particular circumstances. For instance, if such persons might be considered “supervisors”<sup>30</sup> under the LMRA, their right to be candidates under the Act may be limited. Another factor in determining the reasonableness of a ban on such persons is the position (if any) of the NLRB on the status of the particular employees involved. If, for example, the NLRB has determined that certain group leaders are part of the bargaining unit, it might be unreasonable for the union to prohibit them from running for office. An overall consideration in determining whether a member may fairly be denied the right to be a candidate for union office as an employer or supervisor is whether there is a reasonable basis for assuming that the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank and file union members.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

**§ 452.48 Employees of union.**

A labor organization may in its constitution and bylaws prohibit members who are also its full-time non-elective employees from being candidates for union office, because of the potential conflict of interest arising from the employment relationship which could be detrimental to the union as an institution.

<sup>29</sup> See *Nassau and Suffolk Contractors’ Association*, 118 NLRB No. 19 (1957). See also *Local 636, Plumbers v. NLRB*, 287 F.2d 354 (C.A. D.C. 1961).

<sup>30</sup> Under section 2(11) of the Labor Management Relations Act, supervisors include individuals “having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

**§ 452.49 Other union rules.**

(a) Unions may establish such other reasonable rules as are necessary to protect the members against leaders who may have committed serious offenses against the union. For example, a union may, after appropriate proceedings, bar from office persons who have misappropriated union funds, even if such persons were never indicted and convicted in a court of law for their offenses. Of course, the union would have to provide reasonable precautions to insure that no member is made ineligible to hold office on the basis of unsupported allegations and that any rights guaranteed him by the constitution and bylaws are protected. Similarly, a union may require an elected officer to sign an affidavit averring that he is not barred from serving as an officer by the provisions of section 504 of the Act since the union and its officers may not permit a person to serve as an officer if he is so barred (see footnote 23).

(b) It would not violate the Act for a union to prohibit successive terms in office or to limit the number of years an officer may serve. Such rules are intended to encourage as many members as possible to seek positions of leadership in the organization.

**§ 452.50 Disqualification as a result of disciplinary action.**

Section 401(e) was not intended to limit the right of a labor organization to take disciplinary action against members guilty of misconduct. So long as such action is conducted in accordance with section 101(a)(5), a union may, for example, if its constitution and bylaws so provide, bar from office for a period of time any member who is guilty of specific acts, such as strike-breaking, detrimental to the union as an institution. However, if a union has improperly disciplined a member and barred him from candidacy, the Secretary may, in an appropriate case, treat him as a member in good standing entitled to all of the rights of members guaranteed by title IV.

**§ 452.51 Declaration of candidacy.**

A union may not adopt rules which in their effect discourage or paralyze any opposition to the incumbent officers.

Therefore, it would not be a reasonable qualification to require members to file a declaration of candidacy several months in advance of the nomination meeting since such a requirement would have such effect and “serves no reasonable purpose which cannot otherwise be satisfied without resort to this procedure.”<sup>31</sup>

#### § 452.52 Filing fee.

It would be unreasonable to require candidates for office to pay a filing fee because a fee limits the right of members to a reasonable opportunity to nominate the candidates of their choice and there is no objective relationship between the requirement and the ability to perform the duties of the office.

#### § 452.53 Application of qualifications for office.

Qualifications for office which may seem reasonable on their face may not be proper if they are applied in an unreasonable manner or if they are not applied in a uniform way. An essential element of reasonableness is adequate advance notice to the membership of the precise terms of the requirement. A qualification which is not part of the constitution and bylaws or other duly enacted rules of the organization may not be the basis for denial of the right to run for office, unless required by Federal or State law.<sup>32</sup> Qualifications must be specific and objective. They must contain specific standards of eligibility by which any member can determine in advance whether or not he is qualified to be a candidate. For example, a constitutional provision which states that “a candidate shall not be eligible to run for office who intends to use his office as a cloak to effect purposes inimical to the scope and policies of the union” would not be a reasonable qualification within the meaning of section 401(e) because it is

so general as to preclude a candidate from ascertaining whether he is eligible and would permit determinations of eligibility based on subjective judgments. Further, such a requirement is by its nature not capable of being uniformly imposed as required by section 401(e).

#### § 452.54 Retroactive rules.

(a) The reasonableness of applying a newly adopted restriction on candidacy retroactively depends in part upon the nature of the requirement. It would be unreasonable for a labor organization to enforce eligibility requirements which the members had no opportunity to satisfy. For example, it would not be reasonable for a union to apply a newly adopted meeting attendance requirement retroactively since members would have no opportunity to comply with such requirement prior to its effective date.<sup>33</sup> When such a rule is in effect the membership is entitled to advance notice of the requirements of the rule and of the means to be used in verifying attendance. It would not be unreasonable, however, for a union to adopt and enforce a rule disqualifying persons convicted of a felony from being candidates or holding office.

(b) It would not be proper for a labor organization to amend its constitution after an election to make eligible a person who had been elected but who was not eligible at the time of the election.

### Subpart F—Nominations for Office

#### § 452.55 Statutory provisions concerning nomination.

In elections subject to the provisions of title IV a reasonable opportunity must be afforded for the nomination of candidates. Although the Act does not prescribe particular forms of nomination procedures, it does require that the procedures employed be reasonable and that they conform to the provisions of the labor organization’s constitution and bylaws insofar as they are not inconsistent with the provisions of title IV.

<sup>31</sup> *Wirtz v. Local 30, IUOE*, 242 F. Supp. 631 (S.D. N.Y. 1965) reversed as moot 366 F.2d 438 (C.A. 2, 1966), reh. den. 366 F.2d 438.

<sup>32</sup> *Wirtz v. Local Union 559, United Brotherhood of Carpenters and Joiners of America*, 61 LRRM 2618, 53 L.C. ¶11.044 (W.D. Ky. 1966); *Hodgson v. Longshoremen’s Local 1655 New Orleans Dray Clerks*, 79 LRRM 2893, 67 L.C. ¶12.466 (E.D. La. January 5, 1972).

<sup>33</sup> *Hodgson v. Longshoremen’s Local 1655, New Orleans Dray Clerks*, 79 LRRM 2893, 67 L.C. ¶12.466 (E.D. La. January 5, 1972).

**§ 452.56 Notice.**

(a) To meet this requirement, the labor organization must give timely notice reasonably calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. Such notice should be distinguished from the notice of election, discussed in § 452.99. Notice of nominations need not necessarily be given at least 15 days before nominations are held, nor is it required to be given by mail. In an election which is to be held by secret ballot, accordingly, notice of nominations may be given in any manner reasonably calculated to reach all members in good standing and in sufficient time to permit such members to nominate the candidates of their choice, so long as it is in accordance with the provisions of the labor organization's constitution or bylaws. Mailing such notice to the last known address of each member within a reasonable time prior to the date for making nominations would satisfy this requirement. Likewise, timely publication in the union newspaper with sufficient prominence to be seen by all members would be adequate notice. The method of making nominations, whether by mail, petition, or at meetings, could affect the determination of the timeliness of the notice. The nomination notice may be combined with the election notice if the requirements of both are met. Posting of a nomination notice may satisfy the requirement of a reasonable opportunity for making nominations if such posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.

(b) The requirement of a reasonable opportunity for the nomination of candidates has been met only when the members of a labor organization are fully informed of the proper method of making such nominations.

**§ 452.57 Procedures for nomination.**

(a) Since the Act does not prescribe particular procedures for the nomination of candidates, the labor organization is free to employ any method that will provide a reasonable opportunity for making nominations. There are

various methods which, if properly and fairly employed, would be considered reasonable under the Act. For example, nominations may be by petition, or from the floor at a nomination meeting.

(b) Whether a particular procedure is sufficient to satisfy the requirements of the Act is a question which will depend upon the particular facts in each case. While a particular procedure may not on its face violate the requirements of the Act, its application in a given instance may make nomination so difficult as to deny the members a reasonable opportunity to nominate.

**§ 452.58 Self-nomination.**

A system of self-nomination, if this is the only method for making nominations, deprives union members of a reasonable opportunity to nominate candidates and thus is inconsistent with the provisions of title IV.<sup>34</sup> Self-nomination is permissible only if the members are afforded additional methods whereby they may nominate the candidates of their choice.

**§ 452.59 Presence of nominee.**

A requirement that members must be present at the nomination meeting in order to be nominated for office might be considered unreasonable in certain circumstances; for example, in the absence of a provision for an alternative method under which a member who is unavoidably absent from the nomination meeting may be nominated, such a restriction might be regarded as inconsistent with the requirement in section 401(e) that there be a reasonable opportunity to nominate and to be a candidate.

**§ 452.60 Nominations for national, international or intermediate body office.**

(a) When officers of a national or international labor organization or of an intermediate body are to be elected by secret ballot among the members of the constituent local unions, it is not unreasonable for the organization to employ a nominating procedure whereby each local may nominate only one

<sup>34</sup> See *Wirtz v. National Maritime Union of America*, 399 F.2d 544 (C.A. 2 1968).



candidate for each office. When such a procedure is employed the organization may require that each candidate be nominated by a certain number of locals before his name will appear on the ballot. The reasonableness of the number of local union nominations or endorsements required depends upon the size and dispersion of the organization.

(b) Nominations for national, international or intermediate body office by locals or other subordinate organizations differ from primary elections in that they are not subject to all the technical requirements of secret ballot elections.<sup>35</sup> However, where nominations are made by locals or other subordinate organizations fundamental safeguards must be observed including the right of members to vote for and support the candidates of their choice without improper interference.

#### **§ 452.61 Elimination contests—local unions.**

(a) A procedure in a local under which nominees compete in an elimination process to reduce the number of candidates in the final balloting is also part of the election process and must be conducted by secret ballot.

(b) When such an elimination process is used it would be unreasonable for some nominees, such as those selected by a nominating committee, to be exempt from the process since they would thus be given an unfair advantage over other nominees.

#### **§ 452.62 Disqualification of candidates; procedural reasons.**

A candidate who is otherwise eligible for office may not be disqualified because of the failure of a union officer to perform his duties which are beyond the candidate's control. For example, the failure of a local recording secretary to perform his duty to complete

and forward a candidate's nomination certificate to the district may not be used as the basis for disqualifying the candidate.

#### **§ 452.63 Nominations at conventions.**

In elections at conventions at which nominations are also made, delegates who have been elected by secret ballot must be given ample opportunity to nominate candidates on behalf of themselves or the members they represent. A union may adopt a rule limiting access to the convention floor to delegates. However, once the candidates have been nominated, they must be accorded equal opportunity to campaign.<sup>36</sup> Where delegates are instructed by locals to nominate candidates, the constitution of the organization or the convention rules should provide a specific procedure for the implementation of nominating instructions issued by any local to its delegate.

#### **§ 452.64 Write-in votes.**

The Act neither requires nor prohibits write-in candidacy or write-in votes. These matters are governed by appropriate provisions of the union's constitution and bylaws, applicable resolutions, or the established practice of the union.

#### **§ 452.65 Interval between nominations and election.**

The Act specifies no time interval between nominations and election. Thus, both may be scheduled to be held at the same meeting if, during a reasonable period prior to such nomination-election meeting, every member eligible to hold office who intends to run for office is afforded the protection provided in section 401(c), including sufficient opportunity to campaign for office.

### **Subpart G—Campaign Safeguards**

#### **§ 452.66 Statutory provisions.**

The opportunity for members to have a free, fair, and informed expression of

<sup>35</sup>In *Hodgson v. United Mine Workers of America*, the Court directed that the nomination proceedings within the local unions be conducted by secret ballot and in accordance with the provisions of title IV. [80 LRRM 3451, 68 L.C. ¶12,786 (D.D.C. June 15, 1972)]. This Order indicates that the use of secret ballot nominating procedures may be an appropriate remedial measure in a supervised election.

<sup>36</sup>See § 452.79.

their choices among candidates seeking union office is a prime objective of title IV of the Act. Voters can best be assured opportunity for an informed choice if certain campaign rights are guaranteed to candidates and their supporters. To this end, the statute provides that adequate safeguards to insure a fair election shall be provided, and states certain specific safeguards. These safeguards apply not only to candidates for officer positions as defined in the Act but also to candidates for delegate posts, if the delegates are to nominate or elect officers.

**§ 452.67 Distribution of campaign literature.**

The Act imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. When the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he requests it. In order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any change in those conditions.

**§ 452.68 Distribution to less than full membership.**

Although section 401(c) specifies distribution to "all members in good standing," a labor organization must also honor requests for distribution of literature to only a portion of the membership if such distribution is practicable. Each candidate may choose his own ways of campaigning for election according to his own ingenuity and resources. For example, some candidates for national or international union office may desire to limit distribution to delegates, but others may want to appeal directly to the membership or parts thereof in an effort to influence particular constituencies to choose delegates favorable to their candidacy.

**§ 452.69 Expenses of campaign literature.**

Each candidate must be treated equally with respect to the expense of such distribution. Thus, a union and its officers must honor a candidate's request for distribution where the candidate is willing and able to bear the expense of such distribution. However, should the candidate be unable to bear such expense, there is no requirement that the union distribute the literature of the candidate free of charge. In the event the union distributes any candidate's literature without charge, however, all other candidates are entitled to have their literature distributed on the same basis. Since labor organizations have an affirmative duty to comply with all reasonable requests of any candidate to distribute campaign literature (at the candidate's expense), a union rule refusing all such distributions would not be proper, even though applied in a nondiscriminatory fashion. In view of the fact that expenses of distribution are to be borne by the candidate a labor organization may not refuse to distribute campaign literature merely because it may have a small staff which cannot handle such distribution for all candidates. If this is the case, the organization may employ additional temporary staff or contract the job to a professional mailer and charge the expense incurred to the candidates for whom the service is being rendered. The organization may require candidates to tender in advance the estimated costs of distributing their literature, if such requirement is applied uniformly.

**§ 452.70 Contents of literature.**

The Act does not and unions may not regulate the contents of campaign literature which candidates may wish to have distributed by the union. This is left to the discretion of each candidate. The labor organization may not require that it be permitted to read a copy of the literature before it is sent out, nor may it censor the statements of the candidates in any way, even though the statement may include derogatory remarks about other candidates. Furthermore, a union's contention that mailing of certain campaign literature may constitute libel for which it may

be sued has been held not to justify its refusal to distribute the literature, since the union is under a statutory duty to distribute the material.<sup>37</sup>

**§ 452.71 Inspection of membership lists.**

(a) Each bona fide candidate for office has a right, once within 30 days prior to any election in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment. The right of inspection does not include the right to copy the list but does include the right to compare it with a personal list of members. It is the intent of the Act that such membership lists be made available for inspection at the candidates' option any time within the 30-day period. The list is not required to be maintained continuously and may be compiled immediately before each election. The form in which the list is to be maintained is not specified by the Act. Thus, a card index system may satisfy the requirements of the Act. The list may be organized alphabetically or geographically, or by local in a national or international labor organization.

(b) It is the duty of the labor organization and its officers to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members. Thus, if a union permits any candidate to use such lists in any way other than the right of inspection granted by the Act, it must inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it. Such privileges may include permitting inspection of the list where members are not subject to a collective bargaining agreement requiring membership as a condition of employment, inspecting the list more than once, or copying the list.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

<sup>37</sup> See *Philo v. Stellato*, (E.D. Mich. Civil No. 21244, May 24, 1961); *Ansley v. Fulco*, (Calif. Ct. of Appeal, First App. District, Div. Three, 1 Civil No. 29483, May 31, 1972).

**§ 452.72 Period of inspection.**

The Act specifies the maximum period during which the right of inspection of membership lists is to be granted. The opportunity to inspect the lists must be granted once during the 30-day period prior to the casting of ballots in the election. Thus, where a mail ballot system is employed under which ballots are returnable as soon as received by members, the right to inspect must be accorded within the 30-day period prior to the mailing of the ballots to members. It would be an unreasonable restriction to permit inspection of lists only after the ballots have been mailed or the balloting has commenced.

**§ 452.73 Use of union funds.**

In the interest of fair union elections, section 401(g) of the Act places two limitations upon the use of labor organization funds derived from dues, assessments, or similar levy. These limitations are:

(a) No such funds may be contributed or applied to promote the candidacy of any person in an election subject to title IV, either in an election within the organization expending the funds or in any other labor organization; and

(b) No such funds may be used for issuing statements involving candidates in the election.

This section is not intended to prohibit a union from assuming the cost of distributing to the membership on an equal basis campaign literature submitted to the union by the candidates pursuant to the rights granted by section 401(c), as previously discussed, nor does it prohibit the expenditure of such funds for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of the election.

**§ 452.74 Expenditures permitted.**

The Act does not prohibit impartial publication of election information. Thus, it would not be improper for a union to sponsor a debate at which all candidates for a particular office are afforded equal opportunity to express their views to the membership prior to an election. Similarly, a union may issue information sheets containing biographical data on all candidates so

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long as all candidates are given equal opportunity to submit such data.

### § 452.75 Union newspapers.

The provisions of section 401(g) prohibit any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union-financed letter to the members. Any such expenditure regardless of the amount, constitutes a violation of section 401(g).<sup>38</sup>

### § 452.76 Campaigning by union officers.

Unless restricted by constitutional provisions to the contrary, union officers and employees retain their rights as members to participate in the affairs of the union, including campaigning activities on behalf of either faction in an election. However, such campaigning must not involve the expenditure of funds in violation of section 401(g). Accordingly, officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationery, etc., to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation.

### § 452.77 Permissible use of union funds.

Certain uses of union funds are considered permissible under section 401(g). For example, a court ruled that money of a subordinate union may be contributed to a committee formed to challenge the results of a national union election under title IV when such contributions are properly authorized by the members in an effort to pursue election remedies both within and outside the union. In holding such activity to be outside the prohibitions of section 401(g), although the com-

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mittee was formed by defeated candidates and their supporters, the court stated that “\* \* \* It does not promote the candidacy of any person if an election is declared invalid by a court under title IV’s procedure despite the fact that in the rerun election the candidates may be identical. Neither the winner nor the loser of the disputed election gains votes by the setting aside of the election. Such action is not a vote-getting device but merely returns the parties to their pre-election status; it does not place any candidate into office.”<sup>39</sup>

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

### § 452.78 Expenditures by employers.

(a) As an additional safeguard, section 401(g) provides that no money of an employer is to be contributed or applied to promote the candidacy of any person in an election subject to the provisions of title IV. This includes indirect as well as direct expenditures. Thus, for example, campaigning by union stewards on company time with the approval of the employer would violate section 401(g) unless it can be shown that they are on legitimate work assignments, and that their campaign activities are only incidental to the performance of their assigned task and do not interfere with its performance. This prohibition against the use of employer money includes any costs incurred by an employer, or anything of value contributed by an employer, in order to support the candidacy of any individual in an election. It would not, however, extend to ordinary business practices which result in conferring a benefit, such as, for example, a discount on the cost of printing campaign literature which is made available on the same terms to other customers.

(b) The prohibition against the use of employer money to support the candidacy of a person in any election subject to the provisions of title IV is not restricted to employers who employ members of the labor organization in which the election is being conducted,

<sup>38</sup> *Hodgson v. Liquor Salesmen’s Union, Local No. 2*, 334 F.Supp. 1369 (S.D. N.Y.) aff’d 444 F.2d 1344 (C.A. 2 1971); *Shultz v. Local Union 6799, United Steelworkers*, 426 F.2d 969 (C.A. 9 1970).

<sup>39</sup> *Retail Clerks Union, Local 648 v. Retail Clerks International Association*, 299 F.Supp. 1012, 1024 (D.D.C. 1969).

or who have any business or contractual relationship with the labor organization.

#### § 452.79 Opportunity to campaign.

There must be a reasonable period prior to the election during which office-seekers and their supporters may engage in the campaigning that the Act contemplates and guarantees. What is a reasonable period of time would depend upon the circumstances, including the method of nomination and the size of the union holding the election, both in terms of the number of members and the geographic area in which it operates. For example, a candidate for office in a local labor organization was improperly disqualified and then appealed to the international union which directed that his name be placed on the ballot. A complaint was considered properly filed alleging election violations because the candidate's name was restored to the ballot two days prior to the election so that he was denied an equal opportunity to campaign. Similarly, in a mail ballot election a union's delay in the distribution of campaign literature until after the ballots have been distributed and some have been cast would not satisfy the requirement to distribute such literature in compliance with a reasonable request.<sup>40</sup> Such a delay would deny the candidate a reasonable opportunity to campaign prior to the election and would thus not meet the requirement for adequate safeguards to insure a fair election. Where access to the convention floor is limited exclusively to delegates at a convention at which officers are to be elected, there must, nevertheless, be equal opportunity for all nominees to campaign. Thus, if the privilege of addressing the convention is accorded to any of the nominees, it must be accorded to all nominees who request it, whether they are delegates or not.

#### § 452.80 Bona fide candidates.

A person need not be formally nominated in order to be a bona fide candidate entitled to exercise the rights

mentioned in §§ 452.67 and 452.71.<sup>41</sup> Thus, any qualified member seeking to be nominated and elected at a convention would be able to take advantage of the distribution rights even before the convention meets and thus attempt to influence members to select delegates favorable to his candidacy or to persuade the delegates to support his candidacy. A union may reasonably require that a person be nominated in order to be elected, but may not prevent a member who actively seeks office and is otherwise qualified from taking advantage of the campaign safeguards in the Act in an effort to gain the support necessary to be nominated.

#### § 452.81 Rights in intermediate body elections.

While the literal language in section 401(c) relating to distribution of campaign literature and to discrimination with respect to the use of membership lists would seem to apply only to national, international and local labor organizations, two United States District Courts have held that these provisions also apply to intermediate bodies.<sup>42</sup> The Department of Labor considers these rulings to be consistent with the intent of Congress and, therefore, has adopted this position.

#### § 452.82 Reprisal for exercising rights.

A member has a right to support the candidate of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any member thereof.

#### § 452.83 Enforcement of campaign safeguards.

Certain of the safeguards of section 401(c) are enforceable at the suit of any bona fide candidate. This special statutory right to sue is limited to the distribution of campaign literature by the labor organization and the forbearance of such organization from discrimination among candidates with respect to

<sup>40</sup> *Wirtz v. American Guild of Variety Artists*, 267 F. Supp. 527 (S.D.N.Y. 1967).

<sup>41</sup> *Yablonski v. United Mine Workers*, 71 LRRM 2606, 60 L.C. 10,204 (D.D.C. 1969).

<sup>42</sup> *Antal v. UMW District 5*, 64 LRRM 2222, 54 L.C. 11,621 (W.D. Pa. 1966); *Schonfeld v. Rarback*, 49 L.C. 19,039 (S.D.N.Y. 1964).

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the use of membership lists. Of course, all title IV safeguards, including those discussed in this paragraph, are subject to enforcement as provided in section 402. It should be noted that the right of a bona fide candidate to sue in the circumstances described herein is limited to the period prior to election. After the election, the only remedy would be through a suit by the Secretary under section 402.

### **Subpart H—Right to Vote**

#### **§ 452.84 General.**

Under the provisions of section 401(e), every member in good standing is entitled to vote in elections required under title IV which are to be held by secret ballot. The phrase “member in good standing” includes any person who has fulfilled the requirements for membership and who neither has withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of the organization.<sup>43</sup>

#### **§ 452.85 Reasonable qualifications on right to vote.**

The basic right of members to vote in elections of the labor organization may be qualified by reasonable rules and regulations in its constitution and bylaws.<sup>44</sup>

#### **§ 452.86 Vote conditioned on payment of dues.**

A labor organization may condition the exercise of the right to vote upon the payment of dues, which is a basic obligation of membership. Such a rule must be applied uniformly. If a member has not paid his dues as required by the labor organization's constitution or bylaws he may not be allowed to vote. Thus, a rule which suspends a member's right to vote in an election of officers while the member is laid off and is not paying dues would not, in ordinary circumstances, be considered unreasonable, so long as it is applied in a nondiscriminatory manner. However, members must be afforded a reasonable opportunity to pay dues, including a

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grace period during which dues may be paid without any loss of rights. In the case where a member is laid off but desires to maintain his good standing and thus his membership rights by continuing to pay dues, it would be clearly unreasonable for the labor organization to refuse to accept his payment.

#### **§ 452.87 Dues paid by checkoff.**

A member in good standing whose dues are checked off by his employer pursuant to his voluntary authorization provided for in a collective bargaining agreement may not be disqualified from voting by reason of alleged delay or default in the payment of dues. For example, the constitution and bylaws of a labor organization call for suspension of members whose dues are three months in arrears. Dues to be paid directly by a member are two months in arrears when the union changes to a checkoff system. The member may not be denied the right to vote merely because the employer is late in submitting the checked off dues for the first month. It would not be inconsistent with the Act, however, for a union to require a new member who executes a checkoff authorization to pay one month's dues in advance on the date he becomes a member in order to be in good standing for the current month.

#### **§ 452.88 Resumption of good standing.**

While it is permissible for a labor organization to deny the right to vote to those delinquent in paying their dues (with the exceptions noted) or to those who have been suspended or disciplined in accordance with section 101(a)(5) of the Act, a provision under which such persons are disqualified from voting for an extended period of time after payment of back dues or after reinstatement would not be considered reasonable. After a member has resumed his good-standing status, it would be unreasonable to continue to deprive him of his right to vote for a period longer than that for a new member. A new member may reasonably be required to establish a relationship with the union by remaining in good standing for a continuous period of time, e.g., 6

<sup>43</sup> Act, sec. 3(o).

<sup>44</sup> Act, sec. 101(a)(1).

months or a year, before being permitted to vote in an election of officers. However, while the right to vote may be deferred within reasonable limits, a union may not create special classes of nonvoting members.

#### § 452.89 Apprentices.

A labor organization may condition the right to vote upon completion of a bona fide program of apprenticeship training which is designed to produce competent tradesmen in the industry the union serves.

#### § 452.90 Visiting members.

A decision about the voting rights of visiting members is properly one for resolution by the union in accordance with the organization's constitution and bylaws or applicable resolutions. For purposes of the Act, a person is ordinarily considered to be a member of the local to which he pays his dues.

#### § 452.91 Voting by employers, supervisors.

Voting in union elections by employers, self-employed persons, supervisors or other persons who are considered to be part of management is not precluded by title IV of the Act even if they are not required to maintain union membership as a condition of employment. However, as mentioned in the discussion of qualifications for candidacy (see § 452.47), such persons may not dominate or interfere with the administration of any labor organization.

#### § 452.92 Unemployed members.

Members who are otherwise qualified to vote may not be disqualified from voting merely because they are currently unemployed or are employed on a part-time basis in the industry served by the union, provided, of course, that such members are paying dues.

#### § 452.93 Retired members.

The right of retirees to vote may be restricted to the extent provided by the constitution and bylaws of the labor organization.

#### § 452.94 Reasonable opportunity to vote.

The statutory protection of the right to vote implies that there must be a

reasonable opportunity to vote. Thus, there is an obligation on the labor organization to conduct its periodic election of officers in such a way as to afford all its members a reasonable opportunity to cast ballots. A union may meet this obligation in a variety of ways, depending on factors such as the distance between the members' work site or homes and the polling place, the means of transportation available, the nature of the members' occupations, and their hours of work. A reasonable opportunity to vote may require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed. It would also be reasonable for the time period for voting to be extended to accommodate members who might otherwise be prevented from voting due to conflicting work schedules. Shortening the voting period by a late opening of the polls would not, in itself, be improper unless the intent or practical effect of such action is to deprive members of their right to vote.

#### § 452.95 Absentee ballots.

Where the union knows in advance that a substantial number or a particular segment of the members will not be able to exercise their right to vote in person, as, for example, when access to a polling place is impracticable for many members because of shipping assignments, absentee ballots or other means of voting must be made available.<sup>45</sup> In the event absentee ballots are necessary the organization must give its members reasonable notice of the availability of such ballots.<sup>46</sup>

### Subpart I—Election Procedures; Rights of Members

#### § 452.96 General.

The Act safeguards democratic processes by prescribing, in section 401, minimum standards for the regular periodic election of officers in labor organizations subject to its provisions. It

<sup>45</sup> *Goldberg v. Marine Cooks and Stewards Union*, 204 F. Supp. 844 (N.D. Cal. 1962).

<sup>46</sup> *Wirtz v. Local Union 262, Glass Bottle Blowers Association*, 290 F. Supp. 965 (N.D. Calif. 1968).

does not, however, prescribe in detail election procedures which must be followed. Labor organizations are free to establish procedures for elections as long as they are fair to all members and are consistent with lawful provisions of the organization's constitution and bylaws and with section 401. The rights granted to members in section 401(e) refer to individuals, not labor organizations. For example, while locals may be members of an intermediate body, they are not entitled to the rights granted "members" in section 401(e).

**§ 452.97 Secret ballot.**

(a) A prime requisite of elections regulated by title IV is that they be held by secret ballot among the members or in appropriate cases by representatives who themselves have been elected by secret ballot among the members. A secret ballot under the Act is "the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice \* \* \* cast in such a manner that the person expressing such choice cannot be identified with the choice expressed."<sup>47</sup> Secrecy may be assured by the use of voting machines, or, if paper ballots are used, by providing voting booths, partitions, or other physical arrangements permitting privacy for the voter while he is marking his ballot. The ballot must not contain any markings which upon examination would enable one to identify it with the voter. Balloting by mail presents special problems in assuring secrecy. Although no particular method of assuring such secrecy is prescribed, secrecy may be assured by the use of a double envelope system for return of the voted ballots with the necessary voter identification appearing only on the outer envelope.

(b) Should any voters be challenged as they are casting their ballots, there should be some means of setting aside the challenged ballots until a decision regarding their validity is reached without compromising the secrecy requirement. For example, each such ballot might be placed in an envelope with the voter's name on the outside. Of course, it would be a violation of the

secrecy requirement to open these envelopes and count the ballots one at a time in such a way that each vote could be identified with a voter.

(c) In a mail ballot election, a union may require members to sign the return envelope if the signatures may be used in determining eligibility. However, it would be unreasonable for a union to void an otherwise valid ballot merely because a member printed rather than signed his name if the union does not use the signatures to determine voter eligibility.

**§ 452.98 Outside agencies.**

There is nothing in the Act to prevent a union from employing an independent organization as its agent to handle the printing, mailing, and counting of ballots in such elections if all the standards of the Act are met.

**§ 452.99 Notice of election.**

Elections required by title IV to be held by secret ballot must be preceded by a notice of election mailed to each member at his last known home address not less than fifteen days prior to the election.<sup>48</sup> For purposes of computing the fifteen day period, the day on which the notices are mailed is not counted whereas the day of the election is counted. For example, if the election is to be held on the 20th day of the month, the notices must be mailed no later than the 5th day. The notice must include a specification of the date, time and place of the election and of the offices to be filled, and it must be in such form as to be reasonably calculated to inform the members of the impending election. Specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. A statement in the union bylaws that an election will be held at a certain time does not constitute the notice required by the statute. Since the Act specifies that the notice must be mailed, other means of transmission such as posting on a bulletin board or hand delivery will not satisfy the requirement. A notice of election must be sent to every member as defined in section 3(o) of the Act, not only to

<sup>47</sup> Act, sec. 3(k).

<sup>48</sup> Act, sec. 401(e).



members who are eligible to vote in the election. Where the notice, if mailed to the last known permanent or legal residence of the member, would not be likely to reach him because of a known extended absence from that place, the statutory phrase “last known home address” may reasonably be interpreted to refer to the last known temporary address of definite duration. A single notice for both nominations and election may be used if it meets the requirements of both such notices.<sup>49</sup>

[38 FR 18324, July 9, 1973, as amended at 63 FR 33780, June 19, 1998]

**§ 452.100 Use of union newspaper as notice.**

A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper which is mailed to the last known home address of each member not less than fifteen days prior to the election. Where this procedure is used (a) the notice should be conspicuously placed on the front page of the newspaper, or the front page should have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member; (b) the notice should clearly identify the particular labor organization holding the election; (c) the notice should specify the time and place of the election and the offices to be filled; and (d) a reasonable effort must be made to keep the mailing list of the publication current.

**§ 452.101 Sample ballots as notice.**

Sample ballots together with information as to the time and place of the election and the offices to be filled, if mailed fifteen days prior to the election, will fulfill the election notice requirements.

**§ 452.102 Notice in mail ballot election.**

If the election is conducted by mail and no separate notice is mailed to the members, the ballots must be mailed to the members no later than fifteen days

prior to the date when they must be mailed back in order to be counted.

**§ 452.103 Primary elections.**

The fifteen-day election notice provision applies to a “primary election” at which nominees are chosen. Likewise, the fifteen-day election notice requirement applies to any runoff election which may be held after an inconclusive election. However, a separate notice would not be necessary if the election notice for the first election advises the members of the possibility of a runoff election and specifies such details as the time and place of such runoff election as may be necessary.

**§ 452.104 Proximity of notice to election.**

(a) The statutory requirement for giving fifteen days' notice of election is a minimum standard. There is no objection to giving more notice than is required by law. However, it was clearly the intent of Congress to have members notified at a time which reasonably precedes the date of the election. For example, notice in a union publication which is expected to cover elections to be held six months later would not be considered reasonable.

(b) Should a union change the date of an election from the date originally announced in the mail notice to the members, it must mail a second notice, containing the corrected date, at least fifteen days before the election.

**§ 452.105 Interference or reprisal.**

Title IV expressly provides for the right of a member to vote for and otherwise support the candidates of his choice without being subject to penalty, discipline, or improper interference or reprisal of any kind by the labor organization conducting the election or any officer or member thereof.<sup>50</sup>

<sup>50</sup> Act, section 401(e). In *Wirtz v. Local 1752, ILA*, 56 LRRM 2303, 49 L.C. ¶18,998 (S.D. Miss. 1963), the court, under its equitable jurisdiction, granted a preliminary injunction on the motion of the Secretary to enjoin a union from taking disciplinary action against a member. The member had filed a complaint with the Secretary under section

*Continued*

<sup>49</sup> See § 452.56 for a discussion of the requirements for notices of nomination.

**§ 452.106 Preservation of records.**

In every secret ballot election which is subject to the Act, the ballots and all other records pertaining to the election must be preserved for one year.<sup>51</sup> The responsibility for preserving the records is that of the election officials designated in the constitution and by-laws of the labor organization or, if none is so designated, its secretary. Since the Act specifies that ballots must be retained, all ballots, marked or unmarked, must be preserved. Independent certification as to the number and kind of ballots destroyed may not be substituted for preservation. In addition, ballots which have been voided, for example, because they were received late or because they were cast for an ineligible candidate, must also be preserved.

**§ 452.107 Observers.**

(a) Under the provisions of section 401(c), each candidate must be permitted to have an observer (1) at the polls and (2) at the counting of the ballots. This right encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. If there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of ballots. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. The observers should be placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot. The observer is not required to be a member of the labor organization unless the union's constitution and bylaws require him to be a member. There is no prohibition on the use of alternate observers, when necessary, or on a candidate serving as

his own observer. Observers do not have the right to count the ballots.

(b) The right to have an observer at the polls and at the counting of the ballots extends to all candidates for office in an election subject to title IV, i.e., this includes elections in intermediate bodies as well as elections in locals and national and international labor organizations.

(c) In any secret ballot election which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots.

(d) Paying election observers is the responsibility of the candidate they represent unless the union has a rule providing for the payment of observers. If the union does have such a rule, it must be uniformly applied to all candidates.

**§ 452.108 Publication of results.**

In any election which is required by the Act to be held by secret ballot, the votes cast by members of each local labor organization must be counted, and the results published, separately.<sup>52</sup> For example, where officers of an intermediate body are elected directly by members, the votes of each local must be tabulated and published separately. The publishing requirement is to assure that the results of the voting in each local are made known to all interested members. Thus, the presentation of the election report at a regular local membership meeting, and the entry of the report in the minutes, would normally accomplish this purpose in a local election. Such minutes would have to be available for inspection by members at reasonable times, unless copies of the report are made available. In an election that encompasses more

402(a) that resulted in the Secretary filing suit under 402(b).

<sup>51</sup> Act, section 401(e).

<sup>52</sup> Act, sec. 401(e). See also Senate Report 187, 86th Cong. 1st sess., p. 47; Daily Cong. Rec. p. 13682, Aug. 3, 1959, and p. A6573, July 29, 1959.

than one local, publication may be accomplished by posting on appropriate bulletin boards, or in a union newspaper, or by any procedure which allows any member to obtain the information without unusual effort. Of course, the counting and reporting should account for all ballots cast in the election, although only valid votes will be counted in determining the successful candidates.

**§ 452.109 Constitution of labor organization.**

Elections must be conducted in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of title IV.<sup>53</sup>

**§ 452.110 Adequate safeguards.**

(a) In addition to the election safeguards discussed in this part, the Act contains a general mandate in section 401(c), that adequate safeguards to insure a fair election shall be provided. Such safeguards are not required to be included in the union's constitution and bylaws, but they must be observed. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness. For example, if one candidate is permitted to have his nickname appear on the ballot, his opponent should enjoy the same privilege.

(b) A union's failure to provide voters with adequate instructions for properly casting their ballots may violate the requirement of adequate safeguards to insure a fair election.

**§ 452.111 Campaigning in polling places.**

There must not be any campaigning within a polling place<sup>54</sup> and a union may forbid any campaigning within a specified distance of a polling place.

<sup>53</sup>Act, sec. 401(e). Under 29 CFR 402.10, a labor organization is required to make available to all members a copy of its constitution and bylaws.

<sup>54</sup>See *Hodgson v. UMW*, 344 F.Supp. 17 (D.D.C. 1972).

**§ 452.112 Form of ballot; slate voting.**

The form of the ballot is not prescribed by the Act. Thus, a union may, if it so desires, include a proposed bylaw change or other similar proposal on a ballot along with the candidates for office so long as this is permissible under the union's constitution and bylaws. A determination as to the position of a candidate's name on the ballot may be made by the union in any reasonable manner permitted by its constitution and bylaws, consistent with the requirement of fairness and the other provisions of the Act. For example, candidates may be listed according to their affiliation with a particular slate. However, while "slate voting" is permissible, the balloting must be consistent with the right of members to vote for the candidates of their choice. Thus, there must be provision for the voter to choose among individual candidates if he does not wish to vote for an entire slate. To avoid any misunderstanding in this regard, the voting instructions should specifically inform the voter that he need not vote for an entire slate.

**§ 452.113 Sectional balloting.**

The ballots may be prepared so that the names of candidates for positions representative of a particular area appear only on the ballots received by members living in that area.

**§ 452.114 Write-in votes.**

Where write-in votes are permitted in an election subject to title IV, details of the format of the ballot are left to the discretion of the union. Ordinarily, the Secretary would become involved in such matters only in the context of an election complaint under section 402 and then only if the arrangements for write-in votes were so unreasonable that the outcome of the election may have been affected. Of course, a union may, in accordance with its constitution and bylaws or as a matter of stated policy, refuse to permit write-in votes.

**§ 452.115 Distribution of ballots.**

So long as secrecy of the ballot is maintained, there is no restriction on how the ballots are distributed to the

#### **§ 452.116**

voters. Any method which actually provides each eligible voter with one blank ballot would be in conformance with the law.

#### **§ 452.116 Determining validity of ballots.**

Generally, a labor organization has a right to establish reasonable rules for determining the validity of ballots cast in an election. However, where the union has no published guides for determining the validity of a voted ballot, it must count any ballot voted in such a way as to indicate fairly the intention of the voter. An entire ballot may not be voided because of a mistake made in voting for one of the offices on the ballot.

#### **§ 452.117 Majority of votes not required for election.**

A labor organization may by its constitution and bylaws provide for the election of the candidate who receives the greatest number of votes, although he does not have a majority of all the votes cast. Alternatively, it may provide that where no candidate receives a majority of all the votes cast, a run-off election be held between the two candidates having the highest vote. Similarly, a labor organization conducting an election to choose five members of an executive board may designate as elected from among all the nominees the five candidates who receive the highest vote.

#### **§ 452.118 Local unions agents in international elections.**

An international union may establish internal rules which require local or intermediate union officials to act as agents of the international in conducting designated aspects of the international referendum election of officers. The consequences of the failure to perform as directed by such officials will, of course, depend on the totality of the circumstances involved.

#### **§ 452.119 Indirect elections.**

National or international labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or at a convention of delegates or other representa-

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tives who have been elected by secret ballot among the members. Intermediate labor organizations subject to the Act have the option of electing officers either directly by secret ballot among the members in good standing or by labor organization officers or delegates elected by secret ballot vote of the members they represent. Local unions, in contrast, do not have the option of conducting their periodic elections of officers indirectly through representatives.

#### **§ 452.120 Officers as delegates.**

Officers of labor organizations who have been elected by secret ballot vote of their respective memberships may, by virtue of their election to office, serve as delegates to conventions at which officers will be elected, if the constitution and bylaws of the labor organization so provide. In such cases it is advisable to have a statement to this effect included on the ballots. Persons who have been appointed to serve unexpired terms of officers who are ex officio delegates to a convention at which officers will be elected may not vote for officers in such election.

#### **§ 452.121 Limitations on national or international officers serving as delegates.**

While officers of national or international labor organizations or of intermediate bodies who have been elected by a vote of the delegates to a convention may serve as delegates to conventions of their respective labor organizations if the constitution and bylaws so provide, they may not vote in officer elections at such conventions unless they have also been elected as delegates by a secret ballot vote of the members they are to represent. Of course, such officers may participate in the convention, i.e., they may preside over the convention, be nominated as candidates, or act in other capacities permitted under the organization's constitution and bylaws.

#### **§ 452.122 Delegates from intermediate bodies; method of election.**

A delegate from an intermediate body who participates in the election of officers at a national or international convention must have been

elected by a secret ballot vote of the individual members of the constituent units of that body. He may not participate if he was elected by the delegates who make up the intermediate body. The secret ballot election required by the Act is an election among the general membership and not an election of delegates by other delegates.

**§ 452.123 Elections of intermediate body officers.**

Section 401(d) states that officers of intermediate bodies shall be elected either by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot. The phrase “officers representative of such members” includes delegates who have been elected by secret ballot to represent labor organizations in intermediate bodies. Such delegates may therefore participate in the election of officers of intermediate bodies regardless of whether they are characterized as officers of the labor organization they represent.

**§ 452.124 Delegates from units which are not labor organizations.**

To the extent that units, such as committees, which do not meet the definition of a labor organization under the Act<sup>55</sup> participate in the election of officers of a national or international labor organization or an intermediate body, through delegates to the convention or otherwise, the provisions of title IV are, nevertheless, applicable to the election of such delegates. The following example is typical in organizations of railway employees. The chairman of a local grievance committee, which is not a labor organization under the Act, is not an officer within the meaning of the Act. If such a local chairman is a delegate to the general grievance committee, which is considered to be an intermediate body under the Act, however, he must be elected by secret ballot vote of the members he represents, if he votes for officers of the general grievance committee.

**§ 452.125 Delegates from labor organizations under trusteeship.**

It would be unlawful under section 303(a)(1) of the Act to count the votes of delegates from a labor organization under trusteeship in any convention or election of officers of the organization imposing the trusteeship unless such delegates were chosen by secret ballot vote in an election in which all the members in good standing of the subordinate organization were eligible to participate.<sup>56</sup>

**§ 452.126 Delegates to conventions which do not elect officers.**

Delegates to conventions need not be elected by secret ballot when officers of the organization are elected by a secret ballot vote of the entire membership. However, if the only method of making nominations is by delegates, then the delegates must be elected by secret ballot.

**§ 452.127 Proportionate representation.**

When officers of a national, international or intermediate labor organization are elected at a convention of delegates who have been chosen by secret ballot, the structure of representation of the membership is a matter for the union to determine in accordance with its constitution and bylaws. There is no indication that Congress intended, in enacting title IV of the Act, to require representation in delegate bodies of labor organizations to reflect the proportionate number of members in each subordinate labor organization represented in such bodies. Questions of such proportionate representation are determined in accordance with the labor organization's constitution and bylaws insofar as they are not inconsistent with the election provisions of the Act. Congress did not attempt to specify the organizational structure or the system of representation which unions must adopt. However, all members must be represented; the union may not deny representation to locals below a certain size.

<sup>55</sup> Act, sec. 3 (i) and (j) and part 451 of this chapter.

<sup>56</sup> Section 303(b) of the LMRDA provides criminal penalties for violation of section 303(a)(1).

## **§ 452.128**

### **§ 452.128 Under-strength representation.**

A local union may elect fewer delegates than it is permitted under the union constitution as long as the local is allowed to determine for itself whether or not it will send its full quota of delegates to the union convention. The delegates present from a local may cast the entire vote allotted to that local if this is permitted by the constitution and bylaws.

### **§ 452.129 Non-discrimination.**

Further, distinctions in representational strength among or within locals may not be based on arbitrary and unreasonable factors such as race, sex, or class of membership based on type of employment.

### **§ 452.130 Expenses of delegates.**

A local may elect two groups—one which would receive expenses while the other would be required to pay its own way, provided each member has an equal opportunity to run for the expense-paid as well as the non-expense-paid positions.

### **§ 452.131 Casting of ballots; delegate elections.**

The manner in which the votes of the representatives are cast in the convention is not subject to special limitations. For example, the voting may be by secret ballot, by show of hands, by oral roll call vote, or if only one candidate is nominated for an office, by acclamation or by a motion authorizing the convention chairman to cast a unanimous vote of the delegates present.

### **§ 452.132 Proxy voting.**

There is no prohibition on delegates in a convention voting by proxy, if the constitution and bylaws permit.

### **§ 452.133 Election of delegates not members of the labor organization.**

A labor organization's constitution and bylaws may authorize the election of delegates who are not members of the subordinate labor organization they represent, provided the members of the subordinate organization are also eligible to be candidates.

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### **§ 452.134 Preservation of records.**

The credentials of delegates, and all minutes and other records pertaining to the election of officers at conventions, must be preserved for one year by the officials designated in the constitution and bylaws or by the secretary if no other officer is designated. This requirement applies not only to conventions of national or international labor organizations, but also to representative bodies of intermediate labor organizations.

## **Subpart J—Special Enforcement Provisions**

### **§ 452.135 Complaints of members.**

(a) Any member of a labor organization may file a complaint with the Office of Labor-Management Standards alleging that there have been violations of requirements of the Act concerning the election of officers, delegates, and representatives (including violations of election provisions of the organization's constitution and bylaws that are not inconsistent with the Act.).<sup>57</sup> The complaint may not be filed until one of the two following conditions has been met: (1) The member must have exhausted the remedies available to him under the constitution and bylaws of the organization and its parent body, or (2) he must have invoked such remedies without obtaining a final decision within three calendar months after invoking them.

(b) If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month in which to file his complaint.

<sup>57</sup> Act, sec. 402(a).

**§ 452.136 Investigation of complaint by Office of Labor-Management Standards, court action by the Secretary.**

(a) The Office of Labor-Management Standards is required to investigate each complaint of a violation filed in accordance with the requirements of the Act and, if the Secretary finds probable cause to believe that a violation has occurred and has not been remedied, he is directed to bring within 60 days after the complaint has been filed a civil action against the labor organization in a Federal district court. In any such action brought by the Secretary the statute provides that if, upon a preponderance of the evidence after a trial upon the merits, the court finds (1) that an election has not been held within the time prescribed by the election provisions of the Act or (2) that a violation of these provisions "may have affected the outcome of an election", the court shall declare the election, if any, to be void and direct the conduct of an election under the supervision of the Secretary, and, so far as is lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

(b) Violations of the election provisions of the Act which occurred in the conduct of elections held within the prescribed time are not grounds for setting aside an election unless they "may have affected the outcome." The Secretary, therefore, will not institute court proceedings upon the basis of a complaint alleging such violations unless he finds probable cause to believe that they "may have affected the outcome of an election."

(b-1) The Supreme Court, in *Hodgson v. Local Union 6799, Steelworkers Union of America*, 403 U.S. 333, 91 S.Ct. 1841 (1971), ruled that the Secretary of Labor may not include in his complaint a violation which was known to the protesting member but was not raised in the member's protest to the union.

Complaints filed by the Department of Labor will accordingly be limited by that decision to the matters which may fairly be deemed to be within the scope of the member's internal protest and those which investigation discloses he could not have been aware of.

(c) Elections challenged by a member are presumed valid pending a final decision. The statute provides that until such time, the affairs of the labor organization shall be conducted by the elected officers or in such other manner as the union constitution and bylaws provide. However, after suit is filed by the Secretary the court has power to take appropriate action to preserve the labor organization's assets.

[38 FR 18324, July 3, 1973, as amended at 39 FR 37360, Oct. 21, 1974]

**Subpart K—Dates and Scope of Application**

**§ 452.137 Effective dates.**

(a) Section 404 states when the election provisions of the Act become applicable.<sup>58</sup> In the case of labor organizations whose constitution and bylaws can be lawfully modified or amended by action of the organization's "constitutional officers or governing body," the election provisions become applicable 90 days after the enactment of the statute (December 14, 1959). Where the modification of the constitution and bylaws of a local labor organization requires action by the membership at a general meeting or by referendum, the general membership would be a "governing body" within the meaning of this provision. In the cases where any necessary modification of the constitution and bylaws can be made only by a constitutional convention of the labor organization, the election provisions become applicable not later than the next constitutional convention after the enactment of the statute, or one year after the enactment of the statute, whichever is sooner.

(b) The statute does not require the calling of a special constitutional convention to make such modifications. However, if no convention is held within the one-year period, the executive board or similar governing body that has the power to act for the labor organization between conventions is empowered by the statute to make such interim constitutional changes as are necessary to carry out the provisions

<sup>58</sup> Act, sec. 404.

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of title IV of the Act. Any election held thereafter would have to comply with the requirements of the Act.

### § 452.138 Application of other laws.

(a) Section 403<sup>59</sup> provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by the election provisions of the Act.

(b) The remedy<sup>60</sup> provided in the Act for challenging an election already conducted is exclusive.<sup>61</sup> However, existing rights and remedies to enforce the constitutions and bylaws of such organizations before an election has been held are unaffected by the election provisions. Section 603<sup>62</sup> which applies to the entire Act, states that except where explicitly provided to the contrary, nothing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31311, Aug. 1, 1985]

## PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).

<sup>59</sup> Act, sec. 403.

<sup>60</sup> Act, sec. 402.

<sup>61</sup> Act, sec. 403. See Daily Cong. Rec. 86th Cong., 1st sess., p. 9115, June 8, 1959, pp. 13017 and 13090, July 27, 1959. H. Rept. No. 741, p. 17; S. Rept. No. 187, pp. 21–22, 101, 104. Hearings, House Comm. on Education and Labor, 86th Cong., 1st sess., pt. 1, p. 1611. See also *Furniture Store Drivers Local 82 v. Crowley*, 104 S.Ct. 2557 (1984).

<sup>62</sup> Act, sec. 603.

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453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.

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AUTHORITY: Sec. 502, 73 Stat. 536; 79 Stat. 888 (29 U.S.C. 502); Secretary’s Order No. 5–96, 62 FR 107, January 2, 1997.

SOURCE: 28 FR 14394, Dec. 27, 1963, unless otherwise noted.



## INTRODUCTION

**§ 453.1 Scope and significance of this part.**

(a) *Functions of the Department of Labor.* This part discusses the meaning and scope of section 502 of the Labor-Management Reporting and Disclosure Act of 1959<sup>1</sup> (hereinafter referred to as the Act), which requires the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested. The provisions of section 502 are subject to the general investigatory authority of the Secretary of Labor, embodied in section 601 of the Act (and delegated by him to the Assistant Secretary), which empowers him to investigate whenever he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of the Act (except title I or amendments to other statutes made by section 505 or title VII). The Department of Labor is also authorized, under the general provisions of section 607, to forward to the Attorney General, for appropriate action, any evidence of violations of section 502 developed in such investigations, as may be found to warrant criminal prosecution under the Act or other Federal law.

(b) *Purpose and effect of interpretations.* Interpretations of the Assistant Secretary with respect to the bonding provisions are set forth in this part to provide those affected by these provisions of the Act with "a practical guide \* \* \* as to how the office representing the public interest in its enforcement will seek to apply it."<sup>2</sup> The correctness of an interpretation can be determined finally and authoritatively only by the courts. It is necessary, however, for the Assistant Secretary to reach informed conclusions as to the meaning of the law to enable him to carry out his statutory duties of administration and enforcement. The interpretations of the Assistant Secretary contained in this part, which are issued upon the advice of the Solicitor of Labor, indicate the construction of the law which will guide him in performing his duties un-

less and until he is directed otherwise by authoritative rulings of the courts or unless and until he subsequently decides that a prior interpretation is incorrect. However, the omission to discuss a particular problem in this part, or in interpretations supplementing it, should not be taken to indicate the adoption of any position by the Assistant Secretary with respect to such problem or to constitute an administrative interpretation or practice.

(c) *Earlier interpretations superseded.* To the extent that prior opinions and interpretations under the Act, relating to the bonding of certain officials, representatives, and employees of labor organizations and of trusts in which labor organizations are interested, are inconsistent or in conflict with the principles stated in this part, they are hereby rescinded and withdrawn.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985]

## CRITERIA FOR DETERMINING WHO MUST BE BONDED

**§ 453.2 Provisions of the statute.**

(a) Section 502(a) requires that:

Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed \$5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.

(b) This section sets forth, in the above language and in its further provisions, the minimum requirements regarding the bonding of the specified personnel. There is no provision in the Act which precludes the bonding of such personnel in amounts exceeding those specified in section 502(a). Similarly, the Act contains no provision precluding the bonding of such personnel as are not required to be bonded by this section. Such excess coverage may be in any amount and in any form otherwise lawful and acceptable to the parties to such bonds.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

<sup>1</sup>73 Stat. 536; 29 U.S.C. 502.

<sup>2</sup>*Skidmore v. Swift & Co.*, 323 U.S. 134, 138.

### § 453.3

#### **§ 453.3 Labor organizations within the coverage of section 502(a).**

Any labor organization as defined in sections 3(i) and 3(j) of the Act<sup>3</sup> is a labor organization within the coverage of section 502(a) unless its property and annual financial receipts do not exceed \$5,000 in value. The determination as to whether a particular labor organization is excepted from the application of section 502(a) is to be made at the beginning of each of its fiscal years on the basis of the total value of all its property at the beginning of, and its total financial receipts during, the preceding fiscal year of the organization.

#### **§ 453.4 Trusts (in which a labor organization is interested) within the coverage of section 502(a).**

Section 3(l) of the Act defines a *trust in which a labor organization is interested* as:

\* \* \* a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

Both the language and the legislative history<sup>4</sup> make it clear that this definition covers pension funds, health and welfare funds, profit sharing funds, vacation funds, apprenticeship and training funds, and funds or trusts of a similar nature which exist for the purpose of, or have as a primary purpose, the providing of the benefits specified in the definition. This is so regardless of whether these trusts, funds, or organizations are administered solely by labor organizations, or jointly by labor organizations and employers, or by a corporate trustee, unless they were neither created or established by a labor organization nor have any trustee or member of the governing body who was selected or appointed by a labor organization.

<sup>3</sup>See part 451 of this chapter.

<sup>4</sup>Daily Cong. Rec., pp. 5858-59, Senate, April 23, 1959.

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#### **§ 453.5 Officers, agents, shop stewards, or other representatives or employees of a labor organization.**

With respect to labor organizations, the term "officer, agent, shop steward, or other representative" is defined in section 3(q) of the Act to include "elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority)". Other individuals employed by a labor organization, including salaried non-supervisory professional staff, stenographic, and service personnel are "employees" and must be bonded if they handle<sup>5</sup> funds or other property of the labor organization.

#### **§ 453.6 Officers, agents, shop stewards or other representatives or employees of a trust in which a labor organization is interested.**

(a) *Officers, agents, shop stewards or other representatives.* While the definition of the collective term "Officer, agent, shop steward, or other representative" in section 3(q) of the Act is expressly applicable only "when used with respect to a labor organization," the use of this term in connection with trusts in which a labor organization is interested makes it clear that, in that connection, it refers to personnel of such trusts in positions similar to those enumerated in the definition. Thus, the term covers trustees and key administrative personnel of trusts, such as the administrator of a trust, heads of departments or major units, and persons in similar positions. It covers such personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers,<sup>6</sup> and such personnel must be bonded if they handle

<sup>5</sup>For discussion of "handle", see § 453.8.

<sup>6</sup>See the contrast between section 308 of S. 1555 as passed by the Senate ("All officers, agents, representatives, and employees of any labor organization engaged in an industry affecting commerce who handle funds of such organization or of a trust in which such organization is interested shall be bonded \* \* \*") and section 502 of the Act as finally enacted. The change between the two

funds or other property of the trust within the meaning of section 502(a).

(b) *Independent institutions not included.* The analogy to the definition of the term “officer, agent, shop steward, or other representative,” when used with respect to a labor organization, shows that banks and other qualified financial institutions in which trust funds are deposited are not to be considered as “agents” or “representatives” of trusts within the meaning of section 502 and thus are not subject to the bonding requirement, even though they may also have administrative or management responsibilities with respect to such trusts. Similarly, the bonding requirement does not apply to brokers or other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.

(c) *Employees of a trust in which a labor organization is interested.* As in the case of labor organizations, all individuals employed by a trust in which a labor organization is interested are “employees,” regardless of whether, technically, they are employed by the trust, by the trustees, by the trust administrator, or by trust officials in similar positions.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

versions originated in the House Committee on Education and Labor. Prior to the reporting of the bill (H.R. 8342) by that Committee, a joint subcommittee of that Committee held extensive hearings, during the course of which witnesses including President Meany of the AFL-CIO criticized the bonding provision of the Senate bill on the ground that it required only union personnel of joint employer-union trusts to be bonded. (See Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, pp. 1493-94, 1979.

**§ 453.7 “Funds or other property” of a labor organization or of a trust in which a labor organization is interested.**

The affirmative requirement for bonding the specified personnel is applicable only if they handle “funds or other property” of the labor organization or trust concerned. A consideration of the purpose of section 502 and a reading of the section as a whole, including provisions for fixing the amount of bonds, suffice to show that the term “funds or other property”, as used in this section of the Act, encompasses more than cash alone but that it does not embrace all of the property of a labor organization or of a trust in which a labor organization is interested. The term does not include property of a relatively permanent nature, such as land, buildings, furniture, fixtures and office and delivery equipment used in the operations of a labor organization or trust. It does, however, include items in the nature of quick assets, such as checks and other negotiable instruments, government obligations and marketable securities, as well as cash, and other property held, not for use, but for conversion into cash or for similar purposes making it substantially equivalent to funds.

**§ 453.8 Personnel who “handle” funds or other property.**

(a) *General considerations.* Section 502(a) requires “every” person specified in its bonding requirement “who handles” funds or other property of the labor organization or trust to be bonded. It does not contain any exemption based on the amount of the funds or other property handled by particular personnel. Therefore, if the bonding requirement is otherwise applicable to such persons, the amount of the funds or the value of the property handled by them does not affect such applicability. In determining whether a person “handles” funds or other property within the meaning of section 502(a), however, it is important to consider the term “handles” in the light of the basic purpose which Congress sought to achieve by the bonding requirement and the language chosen to make that

purpose effective. Thus, while it is clear that section 502(a) should be considered as representing the minimum requirements which Congress deemed necessary in order to insure the reasonable protection of the funds and other property of labor organizations and trusts within the coverage of the section, it is equally clear from the legislative history<sup>7</sup> and the language used that Congress was aware of cost considerations and did not intend to require unreasonable, unnecessary or duplicative bonding. In terms of these general considerations, more specific content may be assigned to the term “handles” by reference to the prohibition in section 502(a) against permitting any person not covered by an appropriate bond “to receive, handle, disburse, or otherwise exercise custody or control” of the funds or other property of a labor organization or of a trust in which a labor organization is interested. The phrase “receive, handle, disburse, or otherwise exercise custody or control” is not to be considered as expanding the scope of the term “handles” but rather as indicating facets of “handles” which in a specific prohibition, Congress believed should be clearly set forth.

(b) *Persons included generally.* The basic objective of section 502(a) is to provide reasonable protection of funds or other property rather than to insure against every conceivable possibility of loss. Accordingly, a person shall be deemed to be “handling” funds or other property, so as to require bonding under that section, whenever his duties or activities with respect to given funds or other property are such that there is a significant risk of loss by reason of fraud or dishonesty on the part of such person, acting either alone or in collusion with others.

(c) *Physical contact as criterion of “handling.”* Physical dealing with funds or other property is, under the principles above stated, not necessarily a controlling criterion in every case for

determining the persons who “handle” within the meaning of section 502(a). Physical contact with cash, checks or similar property generally constitutes “handling.” On the other hand, bonding may not be required for office personnel who from time to time perform counting, packaging, tabulating or similar duties which involve physical contact with checks, securities, or other funds or property but which are performed under conditions that cannot reasonably be said to give rise to significant risks with respect to the receipt, safekeeping or disbursement of funds or property. This may be the case where significant risks of fraud or dishonesty in the performance of duties of an essentially clerical character are precluded by the closeness of the supervision provided or by the nature of the funds or other property handled.

(d) *“Handling” funds or other property without physical contact.* Personnel who do not physically handle funds or property may nevertheless “handle” within the meaning of section 502(a) where they have or perform significant duties with respect to the receipt, safekeeping or disbursement of funds or other property. For example, persons who have access to a safe deposit box or similar depository for the purpose of adding to, withdrawing, checking or otherwise dealing with its contents may be said to “handle” these contents within the meaning of section 502(a) even though they do not at any time during the year actually secure such access for such purposes. Similarly, those charged with general responsibility for the safekeeping of funds or other property such as the treasurer of a labor organization, should be considered as handling funds or other property. It should also be noted that the extent of actual authority to deal with funds or property may be immaterial where custody or other functions have been granted which create a substantial risk of fraud or dishonesty. Thus, if a bank account were maintained in the name of a particular officer or employee whose signature the bank were authorized to honor, it could not be contended that he did not “handle” funds merely because he had been forbidden by the organization or by his superiors to make deposits or withdrawals.

<sup>7</sup>House Report No. 1147, 86th Congress, 1st Session, p. 35; Daily Cong. Record 16419, Senate, Sept. 3, 1959; Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare on S. 505, S. 748, S. 76, S. 1002, S. 1137, and S. 1311, 86th Congress, 1st Session, p. 709.

(e) *Disbursement of funds or other property.* It is clear from both the purpose and language of section 502(a) that personnel described in the section who actually disburse funds or other property, such as officers or trustees authorized to sign checks or persons who make cash disbursements, must be considered as handling such funds and property. Whether others who may influence, authorize or direct disbursements must also be considered to handle funds or other property can be determined only by reference to the specific duties or responsibilities of these persons in a particular labor organization or trust.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

**§ 453.9 “Handling” of funds or other property by personnel functioning as a governing body.**

(a)(1) *General considerations.* For many labor organizations and trusts special problems involving disbursements will be presented by those who, as trustees or members of an executive board or similar governing body, are, as a group, charged with general responsibility for the conduct of the business and affairs of the organization or trust. Often such bodies may approve contracts, authorize disbursements, audit accounts and exercise similar responsibilities.

(2) It is difficult to formulate any general rule for such cases. The mere fact that a board of trustees, executive board or similar governing body has general supervision of the affairs of a trust or labor organization, including investment policy and the establishment of fiscal controls, would not necessarily mean that the members of this body “handle” the funds or other property of the organization. On the other hand, the facts may indicate that the board or other body exercises such close, day-to-day supervision of those directly charged with the handling of funds or other property that it might be unreasonable to conclude that the members of such board were not, as a group, also participating in the handling of such funds and property.<sup>8</sup> Also,

whether or not the members of a particular board of trustees or executive board handle funds or other property in their capacity as such, certain of these members may hold other offices or have other functions involving duties directly related to the receipt, safekeeping or disbursement of the funds or other property of the organization so that it would be necessary that they be bonded irrespective of their board membership.

(b) *Nature of responsibilities as affecting “handling.”* With respect to particular responsibilities of boards of trustees, executive boards and similar bodies in disbursing funds or other property, much would depend upon the system of fiscal controls provided in a particular trust or labor organization. The allocation of funds or authorization of disbursements for a particular purpose is not necessarily handling of funds within the meaning of the section. If the allocation or authorization merely permits expenditures by a disbursing officer who has responsibility for determining the validity or propriety of particular expenditures, then the action of the disbursing officer and not that of the board would constitute handling. But if pursuant to a direction of the board, the disbursing officer performed only ministerial acts without responsibility to determine whether the expenditures were valid or appropriate, then the board’s action would constitute handling. In such a case, the absence of fraud or dishonesty in the acts of the disbursing officer alone would not necessarily prevent fraudulent or dishonest disbursements. The person or persons who are charged with or exercise responsibility for determining whether specific disbursements are bona fide, regular, and in accordance with the applicable constitution, trust instrument, resolution or other laws or documents governing the disbursement of funds or other property should be considered to handle such funds and property and be bonded accordingly.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14926, Dec. 2, 1965]

<sup>8</sup> As to group coverage, see § 453.16.

## § 453.10

### SCOPE OF THE BOND

#### § 453.10 The statutory provision.

The statute requires that every covered person “shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.”

[30 FR 14926, Dec. 2, 1965]

#### § 453.11 The nature of the “duties” to which the bonding requirement relates.

The bonding requirement in section 502(a) relates only to duties of the specified personnel in connection with their handling of funds or other property to which this section refers. It does not have reference to the special duties imposed upon representatives of labor organizations by virtue of the positions of trust which they occupy, which are dealt with in section 501(a), and for which civil remedies for breach of the duties are provided in section 501(b). The fact that the bonding requirement is limited to personnel who handle funds or other property indicates the correctness of these conclusions. They find further support in the differences between sections 501(a) and 502(a) of the Act which sufficiently indicate that the scope of the two sections is not coextensive.

#### § 453.12 Meaning of fraud or dishonesty.

The term “fraud or dishonesty” shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in handling of funds as delineated in §§ 453.8 and 453.9. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the State in which the act is committed, a court would afford recovery under a bond providing protection against fraud or dishonesty. As usually applied under State laws, the term “fraud or dishonesty” encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful

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misapplication or any other fraudulent or dishonest acts resulting in financial loss.

[30 FR 14926, Dec. 2, 1965]

### AMOUNT OF BONDS

#### § 453.13 The statutory provision.

Section 502(a) of the Act requires that the bond of each “person” handling “funds or other property” who must be bonded be fixed “at the beginning of the organization’s fiscal year \* \* \* in an amount not less than 10 percentum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than \$500,000.” If there is no preceding fiscal year, the amount of each required bond is set at not less than \$1,000 for local labor organizations and at not less than \$10,000 for other labor organizations or for trusts in which a labor organization is interested.

#### § 453.14 The meaning of “funds.”

While the protection of bonds required under the Act must extend to any actual loss from the acts of fraud or dishonesty in the handling of “funds or other property” (§ 453.7), the amount of the bond depends upon the “funds” handled by the personnel bonded and their predecessors, if any. “Funds” as here used is not defined in the Act. As in the case of “funds or other property” discussed earlier in § 453.7, the term would not include property of a relatively permanent nature such as land, buildings, furniture, fixtures, or property similarly held for use in the operations of the labor organization or trust rather than as quick assets. In its normal meaning, however, “funds” would include, in addition to cash, items such as bills and notes, government obligations and marketable securities, and in a particular case might well include all the “funds or other property” handled during the year in the positions occupied by the particular personnel for whom the bonding is required. In any event, it is clear that bonds fixed in the amount of 10 percent or more of the total “funds or other property” handled by the occupants of such positions during the preceeding fiscal year would be in

amounts sufficient to meet the statutory requirement. Of course, in situations where a significant saving in bonding costs might result from computing separately the amounts of "funds" and of "other property" handled, criteria for distinguishing particular items to be included in the quoted terms would prove useful. While the criteria to be applied in a particular case would depend on all the relevant facts concerning the specific items handled, it may be assumed as a general principle that at least those items which may be handled in a manner similar to cash and which involve a like risk of loss should be included in computing the amount of "funds" handled.

[30 FR 14926, Dec. 2, 1965]

**§ 453.15 The meaning of funds handled "during the preceding fiscal year".**

The funds handled by personnel required to be bonded and their predecessors during the course of a fiscal year would ordinarily include the total of whatever such funds were on hand at the beginning of the fiscal year plus any items received or added in the form of funds during the year for any reason, such as dues, fees and assessments, trust receipts, or items received as a result of sales, investments, reinvestments, or otherwise. It would not, however, be necessary to count the same item twice in arriving at the total funds handled by personnel during a year. Once an item properly within the category of "funds" had been counted as handled by personnel during a year, there would be no need to count it again should it subsequently be handled by the same personnel during the same year in some other connection.

**§ 453.16 Funds handled by more than one person.**

The amount of any required bond is determined by the total funds handled during a fiscal year by each "person" bonded, and any predecessors of such "person". The term "person", however, is defined in section 3(d) of the Act to include "one or more" of the various individuals or entities there listed, so that there may be numerous instances where the bond of a "person" may include several individuals. Wherever

this is the case, the amount of the bond for that "person" would, of course, be based on the total funds handled by all who comprise the "person" included in the bond, without regard to the precise extent to which any particular individual might have handled such funds. This would be the situation, for example, in many cases of joint or group activity in the performance of a single function. It would also be true where various individuals performed the same type of function for an organization, even though they acted independently of one another. There would, however, be no objection to bonding each individual separately, and fixing the amount of his bond on the basis of the total funds which he individually handled during the year.

**§ 453.17 Term of the bond.**

The amount of any required bond must in each instance be based on funds handled "during the preceding fiscal year," and must be fixed "at the beginning" of an organization's fiscal year—that is, as soon after the date when such year begins as the necessary information from the preceding fiscal year can practicably be ascertained. This does not mean, however, that a new bond must be obtained each year. There is nothing in the Act which prohibits a bond for a term longer than one year, with whatever advantages such a bond might offer by way of a lower premium, but at the beginning of each fiscal year during its term the bond must be in at least the requisite amount. If it is below that level at that time for any reason, it would then be necessary either to modify the existing bond to increase it to the proper amount or to obtain a supplementary bond. In either event, the terms upon which this could best be done would be left to the parties directly concerned.

FORM OF BONDS

**§ 453.18 Bonds "individual or schedule in form".**

(a) *General consideration.* In addition to such substantive matters as the personnel who must be bonded and the scope and the amount of the prescribed bonds, which have been discussed previously, the form of the bonds is the

subject of a specific provision of section 502(a). Under this provision, a bond meeting the substantive requirements of the section may be either “individual or schedule in form.” These terms are not specially defined and could be descriptive of a variety of possible forms of bonds. According to trade usage, an individual bond is a single bond covering a single named individual to a designated amount, and bonds “schedule in form” may include either name schedule or position schedule bonds. A name schedule bond is typically a single bond covering a series or list of named individuals, each of whom is bonded separately to a designated amount. A position schedule bond is typically a single bond providing coverage with respect to any occupant or holder of one or more specified positions during the term of the bond, each office or position being covered to a designated amount. In a statute relating to trade or commerce, it is frequently helpful to consider whatever trade or commercial usages may have developed with respect to the statutory terms.<sup>9</sup> References to individual, schedule and position schedule bonds may be found in other acts of Congress and indicate a clear awareness of trade usages and terminology in this field.<sup>10</sup>

(b) *Particular forms of bonds.* If the phrase “individual or schedule in form” is considered in light of the trade usages, section 502(a) at least permits bonds which are individual, name schedule or position schedule in form. Of course, section 502(a) does not require any particular type of individual or schedule bonds where different types exist or may be developed. It could not be said, for example, that a bond which schedules positions according to similarities in duties, risks, or required amounts of coverage is not “schedule in form” within the meaning of section 502(a) merely because the particular form of scheduling involved was not employed in bonds current at the time the section became law. A more specific illustration would be a bond scheduling shop stewards as a

group because of the similar duties they perform in collecting dues, or members of an executive board as a group because of the fact that duties are imposed upon the board as such. A bond of this type would be “schedule in form” within the meaning of section 502(a) and, assuming adequacy of amount and coverage of all persons whom it is necessary to bond, such a bond would be in conformity with the statute. Also, a bond scheduling positions or groups of positions according to amounts of funds handled by occupants of the positions could be viewed as “schedule in form.”

(c) *Additional bonding.* Section 502(a) neither prevents additional bonding beyond that required by its terms nor prescribes the form in which such additional coverage may be taken. Thus, so long as a particular bond is schedule in form as to the personnel required to be bonded and schedules coverage of these persons in at least the minimum required amount, additional coverage either as to personnel or amount may be taken in any form either in the same or in separate bonds. A bond which provided name or position schedule coverage for all persons required to be bonded under section 502(a), each scheduled person or position being bonded in at least the required minimum amount, would clearly be “schedule in form” within the meaning of section 502(a) regardless of the extent or form of additional schedule or blanket coverage provided in the same bond.

#### § 453.19 The designation of the “insured” on bonds.

Since section 502 is intended to protect the funds or other property of labor organizations and trusts in which labor organizations are interested, bonds under this section should allow for enforcement or recovery for the benefit of the labor organization or trust concerned by those ordinarily authorized to act for it in such matters. For example, in the case of a local labor organization, a bond would not be appropriate under section 502 if it protected only the interests of a national or international labor organization with which the local labor organization is affiliated or if it designated as the

<sup>9</sup>See 2 Sutherland, *Statutory Construction* (3d ed. 1943) § 4919.

<sup>10</sup>Act of August 24, 1954, 68 Stat. 335, 12 U.S.C. 1766(g); Act of August 9, 1955, 69 Stat. 618, 6 U.S.C. 14.



insured only some particular officer of the organization who does not legally represent it in similar formal instruments.

**QUALIFIED AGENTS, BROKERS, AND SURETY COMPANIES FOR THE PLACING OF BONDS**

**§ 453.20 Corporate sureties holding grants of authority from the Secretary of the Treasury.**

The provisions of section 502(a) require that any surety company with which a bond is placed pursuant to that section must be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds. That Act provides, among other things, that in order for a surety company to be eligible for such grant of authority, it must be incorporated under the laws of the United States or of any State and the Secretary of the Treasury shall be satisfied of certain facts relating to its authority and capitalization. Such grants of authority are evidenced by Certificates of Authority which are issued by the Secretary of the Treasury and which expire on the June 30 following the date of their issuance. A list of the companies holding such Certificates of Authority is published annually in the FEDERAL REGISTER, usually in July. Changes in the list, occurring between July 1 and June 30, either by addition to or removal from the list of companies, are also published in the FEDERAL REGISTER following each such change.

[28 FR 14394, Dec. 27, 1963, as amended at 50 FR 31311, Aug. 1, 1985]

**§ 453.21 Interests held in agents, brokers, and surety companies.**

(a) Section 502(a) of the Act prohibits the placing of bonds required therein through any agent or broker or with any surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any direct or indirect interest. The purpose of this provision, as shown by its legislative history, is to insure against the existence of any "financial or other influential" interests which would affect the objec-

tivity of the action of agents, brokers, or surety companies in bonding the personnel specified in the section.<sup>11</sup> It appears, therefore, that it was the intent of Congress to prevent the placing of bonds through agents or brokers, and with surety companies, in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization holds more than a nominal interest.

(b) Since the statute provides that either a direct or indirect interest by a labor organization or by the specified persons may disqualify an agent, broker, or surety company from having a bond placed through or with it, the disqualification would be effective if a labor organization or any of the specified persons are in a position to influence or control the activities or operations of such brokers, agents, or surety companies, by virtue of interests held either directly by them or by relatives or third parties which they own or control. The question of whether the relationship between the labor organization or the specified persons on the one hand, and another party or parties holding an interest in a broker, agent, or surety company on the other hand, is so close as to put the former in a position to influence or control the activities or operations of such broker, agent, or surety company through the latter, presents a question of fact which must necessarily be determined in each case in the light of all the pertinent circumstances.

(c) It is also to be noted that the statute does not appear to restrict the disqualification to cases in which a direct or indirect interest is held by a labor organization as a whole, or by a substantial number of officers, agents, shop stewards, or other representatives of a labor organization, but provides for the disqualification also in cases where any one officer, agent, shop steward, or other representative of a

<sup>11</sup>Daily Cong. Rec. 9114, Senate, June 8, 1959; Record of Hearings before a Joint Subcommittee of the Committee on Education and Labor, House of Representatives, 86th Congress, 1st Session, on H.R. 3540, H.R. 3302, H.R. 4473 and H.R. 4474, p. 1607.

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labor organization holds such an interest.

[28 FR 14394, Dec. 27, 1963, as amended at 63 FR 33780, June 19, 1998]

### MISCELLANEOUS PROVISIONS

#### **§ 453.22 Prohibition of certain activities by unbonded persons.**

(a) Section 502(a) provides that persons who are not covered by bonds as required by that section shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. This prohibits personnel who are required to be bonded, as explained in § 453.8 from performing any of these acts without being covered by the required bonds. In addition, this provision makes it unlawful for any person with power to do so to delegate or assign the duties of receiving, handling, disbursing, or otherwise exercising custody or control of such funds or property to any person who is not bonded in accordance with the provisions of section 502(a).

(b) The legislative history of the Act indicates, however, that it was not the intent of Congress to make compliance with the bonding requirements of section 502(a) a condition on the right of banks or other financial institutions to serve as the depository of the funds of labor organizations or trusts. Similarly, it appears that the provisions of that section do not require the bonding of brokers or other independent contractors who have contracted with labor organizations or trusts for the performance of functions which are normally not carried out by such labor organizations' or trusts' own officials or employees, such as the buying of securities, the performance of other investment functions, or the transportation of funds by armored truck.<sup>12</sup>

#### **§ 453.23 Persons becoming subject to bonding requirements during fiscal year.**

Considering the purpose of section 502, the language of the prohibition should be considered to apply to per-

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sons who because of election, employment or change in duties begin to handle funds or other property during the course of a particular fiscal year. Bonds should be secured for such persons, in an amount based on the funds handled by their predecessors during the preceding fiscal year, before they are permitted to engage in any of the fund-handling activities referred to in the prohibition, unless coverage with respect to such persons is already provided by bonds in force meeting the requirements of section 502(a).

#### **§ 453.24 Payment of bonding costs.**

The Act does not prohibit payment of the cost of the bonds, required by section 502(a), by labor organizations or by trusts in which a labor organization is interested. The decision whether such costs are to be borne by the labor organization or trust or by the bonded person is left to the duly authorized discretion and agreement of the parties concerned in each case.

#### **§ 453.25 Effective date of the bonding requirement.**

While the bonding provision in section 502(a) became effective on September 14, 1959, its requirement for obtaining bonds does not become applicable to a labor organization or a trust in which a labor organization is interested, or to the personnel of any such organization, until the subsequent date when such organization's next fiscal year begins. This is so because the Act requires each such bond to be fixed at the beginning of the organization's fiscal year in an amount based on funds handled in the preceding fiscal year, and it could not well have been intended that the obtaining of a bond would be necessary in advance of the time when it would be possible to meet this requirement.

#### **§ 453.26 Powers of the Secretary of Labor to exempt.**

Section 502(a) of the Act provides that when in the opinion of the Secretary of Labor a labor organization has made other bonding arrangements which would provide the protection required at comparable cost or less, he may exempt such labor organization from placing a bond through a surety

<sup>12</sup> See § 453.6(b).

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company holding a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C.

6-13), as acceptable surety on Federal bonds.

[30 FR 14926, Dec. 2, 1965]

# SUBCHAPTER B—STANDARDS OF CONDUCT

## PART 457—GENERAL

### Subpart A—Purpose and Scope

Sec.

457.1 Purpose and scope.

### Subpart B—Meaning of Terms as Used in This Subchapter

457.10 CSRA; FSA; CAA; LMRDA.

457.11 Agency, employee, labor organization, dues, Department, activity, employing office.

457.12 Authority; Board.

457.13 Assistant Secretary.

457.14 Standards of conduct for labor organizations.

457.15 District Director.

457.16 Chief, DOE.

457.17 Administrative Law Judge.

457.18 Chief Administrative Law Judge.

457.19 Party.

457.20 Intervenor.

AUTHORITY: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 50 FR 31311, Aug. 1, 1985, unless otherwise noted.

### Subpart A—Purpose and Scope

#### § 457.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement 5 U.S.C. 7120 and 22 U.S.C. 4117, which relate to the standards of conduct for labor organizations in the Federal sector set forth in title VII of the Civil Service Reform Act of 1978 and chapter 10 of the Foreign Service Act of 1980. They prescribe procedures and basic principles which the Assistant Secretary of Labor will utilize in effectuating the standards of conduct required of labor organizations composed of Federal government employees that are covered by these Acts. (Regulations implementing the other provisions of title VII of the Civil Service Reform Act are issued by the Federal Labor Relations Authority, the General

Counsel of the Federal Labor Relations Authority, and the Federal Service Impasses Panel in title 5 of the Code of Federal Regulations. Regulations implementing the other provisions of chapter 10 of the Foreign Service Act are issued by the Foreign Service Labor Relations Board, the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Foreign Service Impasse Disputes Panel in title 22 of the Code of Federal Regulations.)<sup>1</sup>

[50 FR 31311, Aug. 1, 1985, as amended at 62 FR 6093, Feb. 10, 1997]

### Subpart B—Meaning of Terms as Used in This Chapter

#### § 457.10 CSRA; FSA; CAA; LMRDA.

CSRA means the Civil Service Reform Act of 1978; FSA means the Foreign Service Act of 1980; CAA means the Congressional Accountability Act of 1995; LMRDA means the Labor-Management Reporting and Disclosure Act of 1959, as amended.

[62 FR 6093, Feb. 10, 1997]

#### § 457.11 Agency, employee, labor organization, dues, Department, activity, employing office.

Agency, employee, labor organization, and dues, when used in connection with the CSRA, have the meanings set forth

<sup>1</sup>Pursuant to section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1), labor organizations covered by that statute are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, and are therefore subject to the regulations in this subchapter. Regulations implementing the Congressional Accountability Act were issued at 142 Cong. R. S12062 (daily ed., October 1, 1996) and 142 Cong. R. H10369 (Daily ed., September 12, 1996).

## § 457.12

in 5 U.S.C. 7103. *Employee, labor organization, and dues*, when used in connection with the FSA, have the meanings set forth in 22 U.S.C. 4102; *Department*, when used in connection with the FSA, means the Department of State, except that with reference to the exercise of functions under the FSA with respect to another agency authorized to utilize the Foreign Service personnel system, such term means that other agency. *Covered employee, employee, employing office, and agency*, when used in connection with the CAA, have the meanings set forth in 2 U.S.C. 1301 and 1351(a)(2). *Activity* means any facility, organizational entity, or geographical subdivision or combination thereof of any agency or employing office.

[62 FR 6093, Feb. 10, 1997]

## § 457.12 Authority; Board.

*Authority* means the Federal Labor Relations Authority as described in the CSRA, 5 U.S.C. 7104 and 7105. *Board*, when used in connection with the FSA, means the Foreign Service Labor Relations Board as described in the FSA, 22 U.S.C. 4106(a). “Board,” when used in connection with the CAA, means the Board of Directors of the Office of Compliance as described in 2 U.S.C. 1301 and 1381(b).

[62 FR 6093, Feb. 10, 1997]

## § 457.13 Assistant Secretary.

*Assistant Secretary* means the Assistant Secretary of Labor for Employment Standards, head of the Employment Standards Administration.<sup>2</sup>

[62 FR 6093, Feb. 10, 1997]

## § 457.14 Standards of conduct for labor organizations.

*Standards of conduct for labor organizations* shall have the meaning as set forth in the CSRA, 5 U.S.C. 7120, and the FSA, 22 U.S.C. 4117, and as amplified in part 458 of this subchapter. The standards of conduct provisions of the CSRA and the regulations in this sub-

<sup>2</sup>Pursuant to Secretary of Labor’s Order No. 5-96 (62 FR 107, January 2, 1997), the Assistant Secretary for Employment Standards has the responsibility and authority for implementing the standards of conduct provisions of the CSRA and the FSA.

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chapter are applicable to labor organizations covered by the CAA pursuant to 2 U.S.C. 1351(a)(1).

[62 FR 6093, Feb 10, 1997]

## § 457.15 District Director.

*District Director* means the Director of a district office within the Office of Labor-Management Standards, Employment Standards Administration.

[63 FR 33780, June 19, 1998]

## § 457.16 Chief, DOE.

*Chief, DOE* means the Chief of the Division of Enforcement within the Office of Labor-Management Standards, Employment Standards Administration.

[63 FR 33780, June 19, 1998]

## § 457.17 Administrative Law Judge.

*Administrative Law Judge* means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 5 U.S.C. 7120 or 22 U.S.C. 4117 as implemented by part 458 of this subchapter and such other matters as may be assigned.

## § 457.18 Chief Administrative Law Judge.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20210.

## § 457.19 Party.

*Party* means any person, employee, group of employees, labor organization, Department, activity or agency: (a) Filing a complaint, petition, request, or application; (b) named in a complaint, petition, request, or application; or (c) whose intervention in a proceeding has been permitted or directed by the Assistant Secretary, Chief Administrative Law Judge, or Administrative Law Judge, as the case may be.

## § 457.20 Intervenor.

*Intervenor* means a party in a proceeding whose intervention has been permitted or directed by the Assistant Secretary, Chief Administrative Law Judge, or Administrative Law Judge, as the case may be.

## PART 458—STANDARDS OF CONDUCT

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AUTHORITY: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 45 FR 15158, Mar. 7, 1980, unless otherwise noted. Redesignated at 50 FR 31311, Aug. 1, 1985.

### Subpart A—Substantive Requirements Concerning Standards of Conduct

#### § 458.1 General.

The term *LMRDA* means the Labor-Management Reporting and Disclosure Act of 1959, as amended (29 U.S.C. 401 *et seq.*). Unless otherwise provided in this part or in the CSRA or FSA, any term in any section of the LMRDA which is incorporated into this part by reference, and any term in this part which is also used in the LMRDA, shall have the meaning which that term has under the LMRDA, unless the context in which it is used indicates that such meaning is not applicable. In applying the standards contained in this subpart the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of the LMRDA and by applicable court decisions.

#### § 458.2 Bill of rights of members of labor organizations.

(a)(1) *Equal rights.* Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) *Freedom of speech and assembly.* Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) *Dues, initiation fees, and assessments.* Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date this section is published shall not be increased, and no general or special assessment shall be levied upon such members, except:

(i) In the case of a local organization, (A) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (B) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(ii) In the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (A) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than 30 days written notice to the principal office of each local or constituent labor organization entitled to such notice, or (B) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (C) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) *Protection of the right to sue.* No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceedings, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to

communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a 4-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof.

(5) *Safeguards against improper disciplinary action*. No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined, except for nonpayment of dues by such organization or by any officer thereof unless such member has been (i) served with written specific charges; (ii) given a reasonable time to prepare his defense; (iii) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall not be a defense to any proceeding instituted against the labor organization under this part or under the CSRA or FSA.

(c) Nothing contained in this section shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and bylaws of any labor organization.

(d) It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each agreement made by such labor organization with an agency, Department or activity to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer, copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. An employee's rights under this paragraph shall be enforce-

able in the same manner as the rights of a member.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985]

**§ 458.3 Application of LMRDA labor organization reporting requirements.**

The reporting provisions of parts 402, 403, and 408 of this chapter shall apply to labor organizations subject to the requirements of the CSRA or FSA.

(Approved by the Office of Management and Budget under control number 1215-0188)

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15116, Mar. 31, 1994; 63 FR 33780, June 19, 1998]

TRUSTEESHIPS

**§ 458.26 Purposes for which a trusteeship may be established.**

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of (a) correcting corruption or financial malpractice, (b) assuring the performance of negotiated agreements or other duties of a representative of employees, (c) restoring democratic procedures, or (d) otherwise carrying out the legitimate objects of such labor organization.

**§ 458.27 Prohibited acts relating to subordinate body under trusteeship.**

During any period when a subordinate body of a labor organization is in trusteeship, (a) the votes of delegates or other representatives from such body in any convention or election of officers of the labor organization shall not be counted unless the representatives have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate; and (b) no current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship shall be transferred directly or indirectly to the labor organization which has imposed the trusteeship; *Provided, however*, That nothing contained in this section shall prevent

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the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.

### **§ 458.28 Presumption of validity.**

In any proceeding involving § 458.26, a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution and bylaws shall be presumed valid for a period of 18 months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for purposes allowable under § 458.26. After the expiration of 18 months the trusteeship shall be presumed invalid in any such proceeding, unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under § 458.26.

## **ELECTIONS**

### **§ 458.29 Election of officers.**

Every labor organization subject to the CSRA or FSA shall conduct periodic elections of officers in a fair and democratic manner. All elections of officers shall be governed by the standards prescribed in sections 401 (a), (b), (c), (d), (e), (f) and (g) of the LMRDA to the extent that such standards are relevant to elections held pursuant to the provisions of 5 U.S.C. 7120 or 22 U.S.C. 4117 .

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985]

## **ADDITIONAL PROVISIONS APPLICABLE**

### **§ 458.30 Removal of elected officers.**

When an elected officer of a local labor organization is charged with serious misconduct and the constitution and bylaws of such organization do not provide an adequate procedure meeting the standards of § 417.2(b) of this chapter for removal of such officer, the

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labor organization shall follow a procedure which meets those standards.

[62 FR 6094, Feb. 10, 1997]

### **§ 458.31 Maintenance of fiscal integrity in the conduct of the affairs of labor organizations.**

The standards of fiduciary responsibility prescribed in section 501(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof.

### **§ 458.32 Provision for accounting and financial controls.**

Every labor organization shall provide accounting and financial controls necessary to assure the maintenance of fiscal integrity.

### **§ 458.33 Prohibition of conflicts of interest.**

(a) No officer or agent of a labor organization shall, directly or indirectly through his spouse, minor child, or otherwise (1) have or acquire any pecuniary or personal interest which would conflict with his fiduciary obligation to such labor organization, or (2) engage in any business or financial transaction which conflicts with his fiduciary obligation.

(b) Actions prohibited by paragraph (a) of this section include, but are not limited to, buying from, selling, or leasing directly or indirectly to, or otherwise dealing with the labor organization, its affiliates, subsidiaries, or trusts in which the labor organization is interested, or having an interest in a business any part of which consists of such dealings, except bona fide investments of the kind exempted from reporting under section 202(b) of the LMRDA. The receipt of salaries and reimbursed expenses for services actually performed or expenses actually incurred in carrying out the duties of the officer or agent is not prohibited.

### **§ 458.34 Loans to officers or employees.**

No labor organization shall directly or indirectly make any loan to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.



**§ 458.35 Bonding requirements.**

Every officer, agent, shop steward, or other representative or employee of any labor organization subject to the CSRA or FSA (other than a labor organization whose property and annual financial receipts do not exceed \$5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded in accordance with the principles of section 502(a) of the LMRDA. In enforcing this requirement the Assistant Secretary will be guided by the interpretations and policies followed by the Department of Labor in applying the provisions of section 502(a) of the LMRDA and by applicable court decisions.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

**§ 458.36 Prohibitions against certain persons holding office or employment.**

The prohibitions against holding office or employment in a labor organization contained in section 504(a) of the LMRDA are incorporated into this subpart by reference and made a part hereof. The prohibitions shall also be applicable to any person who has been convicted of, or who has served any part of a prison term resulting from his conviction of, violating 18 U.S.C. 1001 by making a false statement in any report required to be filed pursuant to this subpart, or who has been determined by the Assistant Secretary after an appropriate proceeding pursuant to §§ 458.66 through 458.92 to have willfully violated § 458.27: *Provided, however*, That the Assistant Secretary or such other person as he may designate may exempt a person from the prohibition against holding office or employment or may reduce the period of the prohibition where he determines that it would not be contrary to the purposes of the CSRA or the FSA and this section to permit a person barred from holding office or employment to hold such office or employment.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985]

**§ 458.37 Prohibition of certain discipline.**

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of the CSRA or FSA or this subchapter.

**§ 458.38 Deprivation of rights under the CSRA or FSA by violence or threat of violence.**

No labor organization or any officer, agent, shop steward, or other representative or any employee thereof shall use, conspire to use, or threaten to use force or violence to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of the CSRA or FSA or of this subchapter.

**Subpart B—Proceedings for Enforcing Standards of Conduct**

**§ 458.50 Investigations.**

(a) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of §§ 458.26 through 458.30, the Chief, DOE may cause an investigation to be conducted.

(b) When he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this part (other than §§ 458.2, 458.26 through 458.30 or 458.37), a District Director may conduct an investigation.

(c) The authority to investigate possible violations of this part (other than § 458.2 or 458.37) shall not be contingent upon receipt of a complaint.

[50 FR 31312, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.51 Inspection of records and questioning.**

In connection with such investigation the Chief, DOE or a District Director or his representative may inspect such records and question such persons

## **§ 458.52**

as he may deem necessary to enable him to determine the relevant facts. Every labor organization, its officers, employees, agents, or representatives shall cooperate fully in any investigation and shall testify and produce the records or other documents requested in connection with the investigation. This section shall be enforced in accordance with the procedures in §§ 458.66 through 458.92.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31312, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

### **§ 458.52 Report of investigation.**

The Chief, DOE may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of §§ 458.26 through 458.30. The District Director may report to interested persons concerning any matter which he deems to be appropriate as a result of an investigation of possible violations of any provision of this part (other than §§ 458.2, 458.26 through 458.30 and 458.37).

[50 FR 31312, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

### **§ 458.53 Filing of complaints.**

A complaint alleging violations of this part may be filed with any district office, or any other office of the Office of Labor-Management Standards.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

#### **PROCEDURES INVOLVING BILL OF RIGHTS OR PROHIBITED DISCIPLINE**

### **§ 458.54 Complaints alleging violations of § 458.2, Bill of rights of members of labor organization, or § 458.37, prohibition of certain discipline.**

Any member of a labor organization whose rights under the provisions of § 458.2 or § 458.37 are alleged to have been infringed or violated, may file a complaint in accordance with § 458.53: *Provided, however,* That such member may be required to exhaust reasonable hearing procedures (but not to exceed a

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4-month lapse of time) within such organization.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985]

### **§ 458.55 Content of complaint.**

(a) The complaint shall contain appropriate identifying information and a clear and concise statement of the facts constituting the alleged violation.

(b) The complainant shall submit with his complaint a statement setting forth the procedures, if any, invoked to remedy the alleged violation, including the dates when such procedures were invoked and copies of any written ruling or decision which he has received.

### **§ 458.56 Service on respondent.**

Upon the filing of a complaint, a copy of the complaint shall be served upon the respondent, and a written statement of such service shall be furnished to the District Director.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

### **§ 458.57 Additional information and report.**

Upon the filing of a complaint pursuant to §§ 458.54 through 458.56, the District Director shall obtain such additional information as he deems necessary, including the positions of the parties and any offers of settlement.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

### **§ 458.58 Dismissal of complaint.**

If the District Director determines that a reasonable basis for the complaint has not been established, or that an offer of settlement satisfactory to the complainant has been made, he may dismiss the complaint. If he dismisses the complaint, he shall furnish the complainant with a written statement of the grounds for dismissal,

sending a copy of the statement to the respondent.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.59 Review of dismissal.**

The complainant may obtain a review of a dismissal by filing a request for review with the Assistant Secretary within fifteen (15) days of service of the notice of dismissal. A copy of such request shall be served on the District Director and the respondent, and a statement of service shall be filed with the Assistant Secretary. The request for review shall contain a complete statement of the facts and reasons upon which a request is based.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.60 Actionable complaint.**

If it appears to the District Director that there is a reasonable basis for the complaint, and that no offer of settlement satisfactory to the complainant has been made, he shall refer the matter to the Chief Administrative Law Judge, U.S. Department of Labor, for the issuance of a notice of hearing as set forth in § 458.69.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.61 Transfer and consolidation of cases.**

In any matter arising pursuant to the regulations in this subchapter, whenever it appears necessary in order to effectuate the purposes of the CSRA or FSA or to avoid unnecessary costs or delay, the District Director may consolidate cases within his own area or may transfer such cases to any other area, for the purpose of consolidation with any proceedings which may have been instituted in, or transferred to, such area.

[45 FR 15158, Mar. 7, 1980; 45 FR 28322, Apr. 29, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.62 Hearing procedures.**

The proceedings following issuance of the notice of hearing shall be as provided in §§ 458.69 through 458.92 of this part.

PROCEDURES INVOLVING ELECTION OF OFFICERS

**§ 458.63 Complaints alleging violations of § 458.29, election of officers.**

(a) A member of a labor organization may file a complaint alleging violations of § 458.29 within 1 calendar month after he has (1) exhausted the remedies available under the constitution and bylaws of the labor organization and of any parent body, or (2) invoked such available remedies without obtaining a final decision within 3 calendar months of such invocation.

(b) The complaint shall contain a clear and concise statement of the facts constituting the alleged violation(s), the remedies which have been invoked under the constitution and bylaws of the labor organization and when such remedies were invoked.

(c) The complainant shall submit with his complaint a copy of any ruling or decision he has received in connection with the subject matter of his complaint.

**§ 458.64 Investigations; dismissal of complaint.**

(a) If it is determined after preliminary inquiry that a complaint is deficient in any of the following respects, the District Director shall conduct no investigation:

(1) The complainant is not a member of the labor organization which conducted the election being challenged;

(2) The labor organization is not subject to the CSRA or FSA;

(3) The election was not a regular periodic election of officers;

(4) The allegations, if true, do not constitute a violation or violations of § 458.29;

(5) The complainant has not complied with the requirements of § 458.63(a).

(b) If investigation discloses (1) that there has been no violation or (2) that a violation has occurred but could not have affected the outcome or (3) that a violation has occurred but has been remedied, the Chief, DOE shall issue a

determination dismissing the complaint and stating the reasons for his action.

(c) A determination dismissing the complaint may be reviewed by the Assistant Secretary, but only on the basis of deciding whether the Chief, DOE's decision was arbitrary and capricious. The request for review must be made within fifteen (15) days after service of notice of dismissal.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.65 Procedures following actionable complaint.**

(a) If the Chief, DOE concludes that there is probable cause to believe that a violation has occurred which may have affected the outcome and which has not been remedied, he shall proceed in accordance with §§ 458.66 through 458.92.

(b) The challenged election shall be presumed valid pending a final decision thereon by the Assistant Secretary, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(c) When the Chief, DOE supervises an election pursuant to an order of the Assistant Secretary issued under § 458.70 or § 458.91, he shall certify to the Assistant Secretary the names of the persons elected. The Assistant Secretary shall thereupon issue an order declaring such persons to be the officers of the labor organization.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 62 FR 6094, Feb. 10, 1997]

**OTHER ENFORCEMENT PROCEDURES**

**§ 458.66 Procedures for institution of enforcement proceedings.**

(a) Whenever it appears to the Chief, DOE that a violation of any provision of §§ 458.26 through 458.30 has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference

with the Chief, DOE or his representative concerning such alleged violation.

(b) Whenever it appears to a District Director that a violation of this part (other than §§ 458.2, 458.26-458.30, or 458.37) has occurred and has not been remedied, he shall immediately notify any appropriate person and labor organization. Within fifteen (15) days following receipt of such notification, any such person or labor organization may request a conference with the District Director or his representative concerning such alleged violation.

(c) At any conference held pursuant to this section, the Chief, DOE or District Director may enter into an agreement providing for appropriate remedial action. If no person or labor organization requests such a conference, or upon failure to reach agreement following any such conference, the Chief, DOE or District Director shall institute enforcement proceedings by filing a complaint with the Chief Administrative Law Judge, U.S. Department of Labor, and shall cause a copy of the complaint to be served on each respondent named therein. If an agreement is reached and the Chief, DOE or District Director concludes that there has not been compliance with all the terms of the agreement, he may refer the matter to the Assistant Secretary for appropriate enforcement action or file a complaint with the Chief Administrative Law Judge.

[50 FR 31313, Aug. 1, 1985. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.67 Standards complaint; initiation of proceedings.**

A complaint filed under § 458.66 shall constitute the institution of a formal enforcement proceeding in the name of the Chief, DOE or District Director, who shall be the only complaining party in the proceeding and shall, where he believes it appropriate, refrain from disclosing the identity of any person who called the violation to his attention (except in proceedings involving violations of § 458.29, Election of officers). The complaint shall include the following:

(a) The name and identity of each respondent.

(b) A clear and concise statement of the facts alleged to constitute violations of the CSRA or FSA or of this part.

(c) A statement of the relief requested.

(d) In any complaint filed by the Chief, DOE on the basis of a complaint received from a member of a labor organization pursuant to § 458.63, a statement setting forth the procedures, if any, followed to invoke available remedies, including the dates when such procedures were invoked, and the substance of any ruling or decision received by the complaining member from the labor organization or any parent body.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

**§ 458.68 Answer.**

(a) Within twenty (20) days from the service of the complaint the respondent shall file an answer thereto with the Chief Administrative Law Judge and shall serve a copy on all parties. The answer shall be signed by the respondent or his attorney or other agent or representative.

(b) The answer (1) shall contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, explain, or deny each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer to or plead specifically to any allegation in the complaint shall constitute an admission of such allegation.

**Subpart C—Hearing and Related Matters**

**§ 458.69 Notice of hearing.**

The Chief Administrative Law Judge shall issue and cause to be served upon each of the parties a notice of hearing. The notice of hearing shall include the following:

(a) The name and identity of each party and the case number.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A statement of the time and place of the hearing which shall be not less than fifteen (15) days after service of the notice of hearing.

**§ 458.70 Administrative Law Judge.**

Each enforcement proceeding instituted pursuant to this part shall be conducted before an Administrative Law Judge designated by the Chief Administrative Law Judge for the Department of Labor except, however, that when the Administrative Law Judge approves a stipulated agreement for appropriate remedial action, he shall prepare his recommended decision and order adopting that agreement and transfer the case to the Assistant Secretary. The Assistant Secretary may order the remedial action set forth in the stipulated agreement or take such other action as he deems appropriate.

**§ 458.71 Procedure upon admission of facts.**

The admission of all the material allegations of fact in the complaint shall constitute a waiver of hearing. Upon such admission, the Administrative Law Judge without further hearing shall prepare his recommended decision and order in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

**§ 458.72 Motions and requests.**

(a) Motions and requests made prior to the hearing shall be filed with the Chief Administrative Law Judge. The moving party shall serve a copy of all motions and requests on all other parties. Motions during the course of the hearing may be stated orally or filed in writing and shall be made part of the record. Each motion shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions made prior to the filing of his report.

(b) A party may request the attendance of witnesses and/or the production of documents at a hearing held pursuant to this part, by written application before the hearing or orally during the hearing. Copies of an application filed

### **§ 458.73**

before the opening of the hearing shall be served on the other parties, who may file written objections to the request within seven (7) days after such service. The Administrative Law Judge after consideration of any objections, shall grant the request provided the specified testimony and/or documents appear to be necessary to the matters under investigation. If the Administrative Law Judge denies the request he shall set forth the basis for his ruling. Upon the failure of any party or officer or employee of any party to comply with such a request which has been granted by the Administrative Law Judge, the Administrative Law Judge and the Assistant Secretary may disregard all related evidence offered by the party failing to comply with the request or take such other action as may be appropriate.

(c) Employees who have been determined to be necessary as witnesses at a hearing shall be granted official time only for such participation as occurs during their regular work hours and when they would otherwise be in a work or paid leave status. Participation as witnesses includes the time necessary to travel to and from the site of a hearing, and the time spent giving testimony and waiting to give testimony, when such time falls during regular work hours.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985]

### **§ 458.73 Prehearing conferences.**

(a) Upon his own motion or the motion of the parties, the Administrative Law Judge may direct the parties or their counsel to meet with him for a conference to consider:

- (1) Simplification of the issues;
- (2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;
- (3) Stipulations, admissions of fact, and contents and authenticity of documents;
- (4) Limitation of the number of expert witnesses; and
- (5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement

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in such prehearing conferences. The subsequent course of the proceeding shall be controlled by such action.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985]

### **§ 458.74 Conduct of hearing.**

Hearings shall be conducted by an Administrative Law Judge and shall be open to the public unless otherwise ordered by the Administrative Law Judge.

### **§ 458.75 Intervention.**

Any person desiring to intervene in a hearing shall file a motion in writing in accordance with the procedures set forth in § 458.72 or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Such a motion shall be filed with the Administrative Law Judge who shall rule upon such motion.

### **§ 458.76 Duties and powers of the Administrative Law Judge.**

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before him and to prepare, serve and submit his recommended decision and order pursuant to § 458.88. Upon assignment to him and before transfer of the case to the Assistant Secretary, the Administrative Law Judge shall have the authority to:

- (a) Grant requests for appearance of witnesses or production of documents;
- (b) Rule upon offers of proof and receive relevant evidence;
- (c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;
- (d) Limit lines of questioning or testimony which are immaterial, irrelevant, or unduly repetitious;
- (e) Regulate the course of the hearing and if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;
- (f) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his own motion;
- (g) Dispose of procedural requests, motions, or similar matters which

shall be made part of the record of the proceeding, including motions to amend pleadings; also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of his recommended decision and order;

(h) Examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(j) Continue, at his discretion, the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice and also concerning which the Department of Labor by reason of its functions is presumed to be expert: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's recommended decision and order, of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(l) Correct or approve proposed corrections of the official transcript when deemed necessary; and

(m) Take any other action necessary under the foregoing and not prohibited by these regulations.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985]

#### **§ 458.77 Rights of parties.**

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

#### **§ 458.78 Rules of evidence.**

The technical rules of evidence do not apply. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged. Every party shall have a right to present his case by oral and documentary evidence and to submit rebuttal evidence.

#### **§ 458.79 Burden of proof.**

In a hearing concerning an alleged violation of § 458.2 (Bill of rights of members of labor organizations) or § 458.37 (Prohibition of certain discipline), the complainant shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of §§ 458.26–458.30, the Chief, DOE shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of other standards of conduct matters, the District Director shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

#### **§ 458.80 Unavailability of Administrative Law Judges.**

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a recommended decision and order on the record as made, or both.

#### **§ 458.81 Objection to conduct of hearing.**

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record. No such objection shall be deemed waived by further

participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary only upon the filing of exceptions to the Administrative Law Judge's recommended decision and order in accordance with § 458.88.

**§ 458.82 Motions after a hearing.**

All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record under § 458.76(l), shall be made in writing to the Assistant Secretary. The moving party shall serve a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with a statement of service, shall be filed with the Assistant Secretary after the hearing, within seven (7) days after service of the moving papers unless it is otherwise directed.

**§ 458.83 Waiver of objections.**

Any objection not duly urged before an Administrative Law Judge shall be deemed waived.

**§ 458.84 Oral argument at the hearing.**

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

**§ 458.85 Transcript.**

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will be provided to the parties, in accordance with the provisions of part 70 of this title, or they may be examined in the district office in whose geographic jurisdiction the hearing has been held.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 63 FR 33780, June 19, 1998]

**§ 458.86 Filing of brief.**

Any party desiring to submit a brief to the Administrative Law Judge shall file the original within ten (10) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time. Copies of such brief shall be served on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made after the hearing shall be made in writing to the Administrative Law Judge and copies thereof served on the other parties. A statement of such service shall be furnished. A request for extension of time shall be received not later than three (3) days before the date such briefs are due. In the absence of the Administrative Law Judge such requests shall be ruled upon by the Chief Administrative Law Judge. No reply brief may be filed except by permission of the Administrative Law Judge.

**§ 458.87 Proposed findings and conclusions.**

Within fifteen (15) days following the close of the hearing, the parties may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become part of the record.

**§ 458.88 Submission of the Administrative Law Judge's recommended decision and order to the Assistant Secretary; exceptions.**

(a) After the close of the hearing, and the receipt of briefs, or findings and conclusions, if any, the Administrative Law Judge shall prepare his recommended decision and order expeditiously. The recommended decision and order shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including the remedial action to be taken.

(b) The Administrative Law Judge shall cause his recommended decision and order to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall



transfer the case to the Assistant Secretary including his recommended decision and order and the record. The record shall include the complaint, the notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) Exceptions to the Administrative Law Judge's recommended decision and order may be filed by any party with the Assistant Secretary within fifteen (15) days after service of the recommended decision and order: *Provided, however*, That the Assistant Secretary may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Assistant Secretary.

**§ 458.89 Contents of exceptions to Administrative Law Judge's recommended decision and order.**

(a) Exceptions to an Administrative Law Judge's recommended decision and order shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's recommended decision and order to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

**§ 458.90 Briefs in support of exceptions.**

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions may be filed with the Assistant Secretary within ten (10) days after service of the exceptions.

**§ 458.91 Action by the Assistant Secretary.**

(a) After considering the Administrative Law Judge's recommended decision and order, the record, and any exceptions filed, the Assistant Secretary shall issue his decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as he deems appropriate: *Provided, however*, That unless exceptions are filed which are timely and in accordance with § 458.89, the Assistant Secretary may, at his discretion, adopt without discussion the recommended decision and order of the Administrative Law Judge, in which event the findings, conclusions, and recommendations of the Administrative Law Judge, as contained in his recommended decision and order, shall, upon appropriate notice to the parties, automatically become the decision of the Assistant Secretary.

(b) Upon finding a violation of the CSRA, FSA or this part, the Assistant Secretary may order the respondent to cease and desist from such violative conduct and may require the respondent to take such affirmative action as he deems appropriate to effectuate the policies of the CSRA or FSA.

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(c) Upon finding no violation of the CSRA, FSA or this part, the Assistant Secretary shall dismiss the complaint.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, Aug. 1, 1985]

### **§ 458.92 Compliance with decisions and orders of the Assistant Secretary.**

When remedial action is ordered, the respondent shall report to the Assistant Secretary, within a specified period, that the required remedial action has been effected. When the Assistant Secretary finds that the required remedial action has not been effected, he shall refer the matter for appropriate action to the Federal Labor Relations Authority (in the case of labor organizations covered by the CSRA), the Foreign Service Labor Relations Board (in the case of labor organizations covered by the FSA), or the Board of Directors of the Office of Compliance (in the case of labor organizations covered by the Congressional Accountability Act).

[62 FR 6094, Feb. 10, 1997]

### **§ 458.93 Stay of remedial action.**

In cases involving violations of this part, the Assistant Secretary may direct, subject to such conditions as he deems appropriate, that the remedial action ordered be stayed.

## **PART 459—MISCELLANEOUS**

Sec.

459.1 Computation of time for filing papers.

459.2 Additional time after service by mail.

459.3 Documents in a proceeding.

459.4 Service of pleading and other papers under this subchapter.

459.5 Rules to be construed liberally.

AUTHORITY: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 5-96, 62 FR 107, January 2, 1997.

SOURCE: 45 FR 15165, Mar. 7, 1980, unless otherwise noted. Redesignated at 50 FR 31311, Aug. 1, 1985.

### **§ 459.1 Computation of time for filing papers.**

In computing any period of time prescribed by or allowed by the regulations contained in part 458 of this subchapter, the day of the act, event, or default after which the designated period of time begins to run, shall not be

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included. The last day of the period so computed is to be included unless it is a Saturday, Sunday or Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When these regulations require the filing of any paper, such document must be received by the Assistant Secretary or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

### **§ 459.2 Additional time after service by mail.**

Whenever a party has the right or is required to do some act pursuant to these regulations within a prescribed period after service of a notice or other paper upon him and the notice or paper is served on him by mail, five (5) days shall be added to the prescribed period: *Provided, however,* That five (5) days shall not be added if any extension of time may have been granted.

### **§ 459.3 Documents in a proceeding.**

(a) *Title.* Documents in any proceeding under part 458 of this subchapter, including correspondence, shall show the title of the proceeding and the case number, if any.

(b) *Signature.* The original of each document required to be filed under these regulations shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

### **§ 459.4 Service of pleading and other papers under this subchapter.**

(a) *Method of service.* Notices of hearing, decisions, orders and other papers may be served personally or by registered or certified mail or by telegraph. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail.

(b) *Upon whom served.* All papers, except as herein otherwise provided, shall be served upon all counsel of record and upon parties not represented by counsel or by their agents designated by them or by law and upon the Assistant Secretary, or his designated officer, or agent or Administrative Law Judge where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

**§ 459.5 Rules to be construed liberally.**

(a) The regulations in this subchapter may be construed liberally to effectuate the purposes and provisions of the CSRA or FSA.

(b) When an act is required or allowed to be done at or within a specified time, the Assistant Secretary may at any time order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the CSRA or FSA.